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ABSTRACT

By allowing students the opportunity to experience individual freedoms and encouraging them to learn and practice the responsibilities emanating from their individual rights, educators are teaching students how to govern themeslves. "Judicious Discipline" offers a perspective for school rules and decisions based on the Bill of Rights and this time-tested concept of classroom equanimity. This book introduces a simple, logical, and legal approach to classroom management. Part I briefly reviews the historical background and constitutional law applicable to public education and a structure for implementing rules and decisions. Part II develops a framework of school rules and consequences designed to teach students how to function well in a participatory society--a contradiction to the autocratic environment of most American homes and many schools. Part III offers implementation strategies and techniques, along with suggestions for change regarding attendance, grading practices, punishments, property loss and damage, speech and expression, tobacco use, search and seizure, and other issues. Part IV treats the ethics of classroom discipline and provides lists of positive ethical practices, along with those to avoid. A brief, semiannotated bibliography of legal references is appended. (MLH)

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Judicious Discipline

By Forrest Gathercoal

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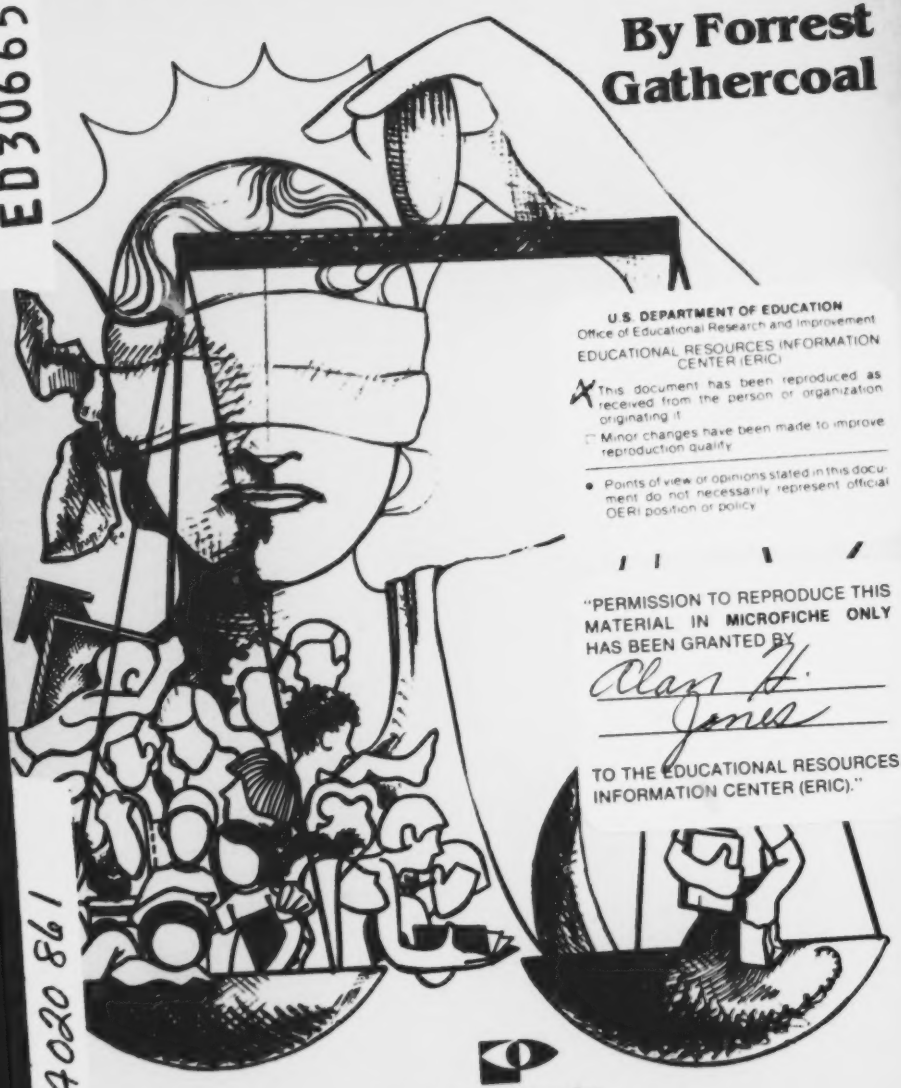

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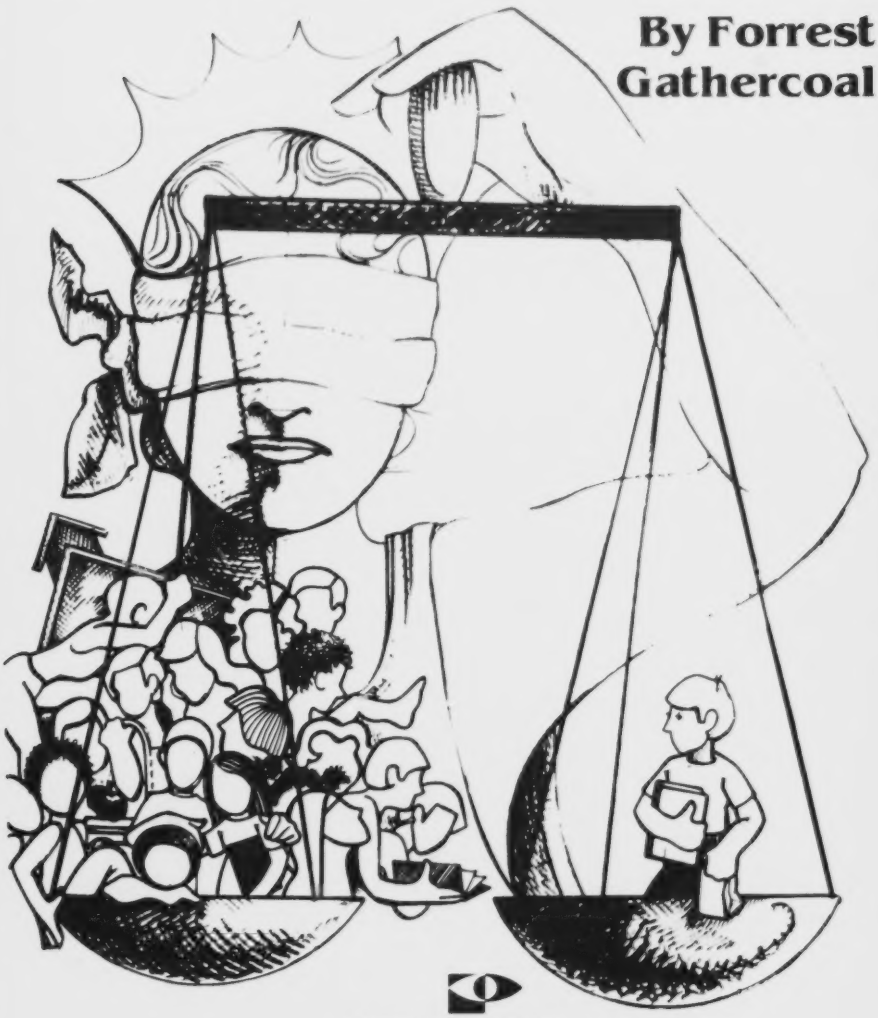

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—Forrest Gathercoal

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Preface

Preface

THERE is an uncomplicated, yet workable, rule that has evolved from the classrooms of successful teachers throughout our country. Simply stated: "You may do what you want in this classroom until it interferes with the rights of other students." Teachers who have taken this position and applied it in an evenhanded manner to student conduct may have unknowingly taught their students the basic principles of our United States Constitution. At the same time, a classroom environment is created in which students are able to learn about their responsibilities to the other members of the class. *Judicious Discipline* is a perspective for school rules and decisions cruxed on the Bill of Rights and this time-tested concept of classroom equanimity. By allowing students the opportunity to experience individual freedoms, and encouraging them to learn how to handle the responsibilities and demands emanating from their individual rights, we are teaching students how to govern themselves. This democratic setting in our schools and classrooms will serve to model the same system of laws and regulations under which students will live when their compulsory schooling is completed.

Educators who use this workable and uncomplicated method for classroom control will learn a new and very legal language for their tried and true approach to discipline. Teachers and administrators employing other systems, or none at all, may view this approach to discipline as a cohesive and consistent rationale for the adoption of rules and disciplinary methods. All will agree that the answers to everyday discipline problems cannot be quantified into a single publication. In this book I offer a framework of ideas which introduces a simple, logical, and legal approach for classroom management.

It was written to help educators make sense of this new judicious perspective of education by learning to use student rights and responsibilities as a basis for an effective model of classroom discipline.

Part I

Part I

The Fulcrum: A Constitutional Perspective

HOW often, in the faculty lounge, lunch room, or educational seminars, do teachers and administrators express frustration over the plethora of legal issues they are required to comprehend and implement? This feeling of futility is often attributed to the change in the courts' attitude to the rights afforded students today in our public schools.

There has been a shift nationally from the parental protectiveness of *in loco parentis*, in place of the parents, to the realization that students no longer shed their constitutional rights at the schoolhouse gate. Now that public school students are legally "persons" within the meaning of our Constitution, teachers and administrators in public education must learn the new language of the law and how it applies to the school setting.

It may be frustrating and take time for many of us to make the change from the parental approach of disciplining students to that of accepting our students as "young persons" with many of the rights and freedoms allowed them by our nation's Constitution.

"The Fulcrum" is a brief review of the historical background and constitutional law applicable to public education and a framework for implementation of rules and decisions.

The Democratic System That Awaits Our Graduates

Students will graduate into a system of constitutional government which bestows rights on the majority as well as certain freedoms on the individual. These individual rights are not guaranteed, but neither are they easily denied by the majority. Growing up in America, most of us learn that democracy is a system of government in which the majority rules. This concept is very familiar since we used it to settle playground arguments about what game the group was going to play, what the rules would be, or what to do next. Listening to students today helps us realize this has not changed.

We learn to understand the concept of "the majority rules" but seldom do we learn what it means or how it feels to have individual rights. It is true that the majority in our country have the authority to amend our Constitution through a process which requires a vote and ratification of the amendment by federal and state legislatures. The difficult and time-consuming nature of the amendment process is illustrated by the attempted enactment of the Equal Rights Amendment during the 1970s and '80s.

After all the votes are counted and the amendments are all in place, the individual's rights and freedoms enumerated in our Constitution cannot be voted on by any body: not by Congress, state legislatures, school boards, faculty members, or even by the majority of students in a classroom. In a nutshell, this constitutional form of democracy balances unique individual differences with the needs, interests, and welfare of the majority.

The Bill of Rights

American constitutional liberties spring from the first ten amendments, better known as the Bill of Rights. The first eight convey specific rights. The First Amendment's use of the term "freedom" in the context of religion, speech, press, and assembly is generally considered to be the most important amendment to the Constitution. The clauses "due process of law" in the Fifth and Fourteenth Amendments and "equal protection" in the Fourteenth

Amendment are subject to widespread use and application in civil rights issues epitomizing the wellspring of student justice. Constitutional clauses are not self-explanatory. Their meaning is translated into political, legal, and educational reality largely by the Supreme Court of the United States.

Constitutional rights exist to protect three basic values: *freedom*, *justice*, and *equality*. The legitimacy of the American legal system stems mainly from these fundamental values. Controversy exists over the question of how to limit individual freedoms. The difficulty lies in devising a precise formula to indicate when freedom has exceeded rightful bounds. Justice is concerned with due process and deals with basic governmental fairness. Finally, equality presents us with the problem of distributing burdens and benefits. The proposition that "all people are created equal" has never meant that we all possess the same abilities, interests, or talents. These three values have their antecedents in the United States Constitution and are basic to understanding individual liberties and civil rights contained within the framework of the United States government.

The First Amendment

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or of the people peaceably to assemble, and to petition the government for a redress of grievances.

The First Amendment was designed to insure certain basic personal freedoms which, until 1969, were seldom applied to students and teachers in American public schools. In recent years, numerous judicial decisions related to matters concerning free speech have been litigated (e.g., student speeches, dress codes, political expression, length of hair, and participation in the *Pledge of Allegiance*). Freedom of the press has also generated considerable litigation concerning student rights to publish and distribute material on school premises. Furthermore, the two clauses in the First Amendment which relate to religion have had considerable impact on public educational programs.

Of all the articles and amendments in the Bill of Rights, those related to church-state relationships have been the most difficult to

litigate and apply to our school system. The Court's adjudication of this provision has left teachers and administrators with considerable latitude for their own interpretations. As a result, there is a certain amount of subtle and unintentional discrimination in many public schools today.

The Fourth Amendment

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

This amendment presents an issue of practical importance to all teachers and administrators who contemplate the search of student property such as lockers, purses, pockets, or student vehicles in the parking lot. Most faculty do not consider themselves to have the same societal charge as that of law enforcement officers. However, effective school discipline and management often require the use of similar methods.

The Fifth, Eighth, Ninth, and Tenth Amendments

The Fifth, Eighth, Ninth, and Tenth Amendments have been cited in only a few cases litigated by students and school personnel. The self-incrimination clause of the Fifth Amendment is employed by teachers questioned about their activities outside the classroom. It is only applicable in questions of criminal activity and, therefore, not relevant in most school situations. The just compensation clause of the Fifth Amendment is used occasionally in educational litigation to protect citizens' rights to just compensation when property is appropriated for school purposes.

The Eighth Amendment prohibits excessive bail and fines and protects citizens from cruel and unusual punishment. While this amendment has appeared more often in suits challenging the treatment of prisoners or other persons involuntarily institutionalized, it has been used in a few cases to protect the use of corporal punishment in public schools. Such challenges have generally favored the

schools, therefore prompting most parents to sue in tort for money damages against injuries caused by excessive physical punishment.

The Ninth Amendment stipulates that the rights enumerated in the United States Constitution shall not be construed to deny or disparage other rights retained by the people. This amendment supports other freedom arguments and has appeared in educational litigation dealing with the assertion of rights to personal privacy by students and teachers. It has also been successfully interwoven with other amendments that provide for our basic personal freedoms.

The Tenth Amendment, often referred to as the reserved-powers clause, states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, of the people." The United States Constitution does not provide a legal base for public education in America. Hence, this amendment has been the underpinning for any state assuming the primary responsibility for education. Our federal Constitution, however, is the source of all of our nation's laws and generally supercedes state law wherever there is a direct conflict between federal and state governments.

The Fourteenth Amendment

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The last two clauses of the Fourteenth Amendment have had the most significant impact on public education. The first of these, known as the *due process* clause, provides the legal basis for rules which deny a student's access to education and extends from time spent in the hallway to expulsion from school. The last clause, known as the *equal protection* clause, serves as the constitutional foundation for all our laws and rules prohibiting discrimination. This clause is broadly interpreted in cases dealing with all forms of discrimina-

tion including sex, race, national origin, the handicapped, marital status, age, and religion, and assures an equal educational opportunity for all students. In short, the Fourteenth Amendment acts as the fulcrum which allows this fragile constitutional form of government to balance the countless needs and desires of individuals in our culturally rich and diverse society.

Due Process

> . . . nor shall any State deprive any person of life, liberty or property, without due process of law; . . .

Picture in your mind's eye the blindfolded woman standing strong and confident as she adorns the thresholds of our country's courthouses, her outstretched arm holding the familiar scales of justice. Imagine one scale heaped to the brim with the bodies of all the boys and girls in a public school actively engaging in their studies and activities. On the other side of the scale, picture one lone student, standing there with book and sack lunch in hand, gazing apprehensively at the agglomeration of students amassed on the other side. This graphic illustration symbolizes the quintessence of "due process" as applied to our public schools.

In its simplest terms, due process is a legal effort to balance individual rights with the need to protect the interests of society. Only when the state is able to show a compelling reason why public interest should outweigh individual constitutional rights, will the court's scale of justice swing toward the mass of bodies. Conversely, if the government cannot demonstrate a *compelling state interest*, then the rights of a single student will weigh more heavily than all who crowd the other side of the scale. As the scales of justice tip in favor of the minority, all the other students and faculty must learn to respect and show consideration for that individual's rights.

Although succinct, the due process clause represents two hundred years of common law application and thousands of court decisions clarifying and interpreting its meaning. In order to fully understand the implications involved and appreciate the complexity of this constitutional concept, we must first begin by examining this clause a few words at a time.

"... *nor shall any State*" means that in order to have a right to due process there must be state action. When applied to education, only students and faculty in *public* schools enjoy Fourteenth Amendment rights; their counterparts in our nation's private schools do not. The legal rights of students and faculty in private schools are expressly and implicitly set out in the contract between individuals and the private corporation which usually administers the school. Dismissal from a private school would therefore be considered a breach of contract by the non-conforming student. Students who disobey or are not satisfied with the rules of a private school are free to choose another school. Conversely, compulsory attendance laws and public funding combine to create the state action necessary for students' rights to due process in public schools.

"... *deprive any person*" means withholding these constitutional rights from any person within the jurisdiction of the United States, both citizens and non-citizens. The law has even been extended to include those non-citizens who are in the United States illegally. This is not to say that illegal aliens have a right to live here; but they do have the right to due process while here, including the right to legal proceedings which may lead to their deportation. "Any person" is broadly interpreted by the courts to include students in our public schools.

"... *of life, liberty, or property*" defines those rights which may be deprived through due process by governmental action. It is interesting to note that the framers of our Constitution used just three words to protect our past, present, future, and even death at the hands of the government. For example, the word *property* includes everything a person legally owns and has acquired. It covers such tangible properties as real estate, personal property, and money, as well as intangibles like contracts of employment, and eligibility and entitlement to welfare payments. It also encompasses those tangibles and intangibles to which we have ownership and which we have a right to possess.

The second word, *liberty*, begins with the present and embodies all future acquisitions and aspirations.

> ... it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of

> his own conscience, and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men. *Meyer* v. *Nebraska* 262 US 390, 399 (1923).

Because property encompasses all those tangibles and intangibles already acquired, it is a much easier concept for students to grasp than the ambiguous notion of future belongings and opportunities germane to liberty. Too often the liberty issue is overlooked in favor of the more easily understood and simply applied property aspect. The later sections on grading practices and compulsory school attendance offer good examples of liberty as it applies to the public school setting. Educators devoted to helping students succeed, and who sincerely care about students' futures exemplify the importance of liberty within the meaning and spirit of constitutional rights and, as a result, often enjoy a special place as a role model and mentor to their students.

Finally, the word *life* refers to the loss of personal life at the hands of the government — the execution of a criminal. Stated in positive terms, the government may deprive a person of life, liberty, or property only if the individual is given due process.

"*. . . without due process of law*" means the process due persons by the local, state, and federal governments. Clarifying its application to everyday situations, court decisions have separated due process into two distinct aspects: *substantive* and *procedural*. It is very important to delineate between these two aspects when clarifying their application to everyday school situations.

Substantive due process pertains to the legislation, the rule, or the law itself, and means a basic fairness in the substance of the decision. If the state attempted to deprive a person of life, liberty, or property, substantive due process would require a valid objective and means that are reasonably calculated to achieve the objective. The rule should: 1. Have some rational need for its adoption; 2. Be as good in meeting the need as any alternative that reasonable people would have developed; 3. Be supported by relevant and substantial evidence and findings of fact.

In other words, substantive due process implies that our nation's laws and decisions must be legal before our government can deprive someone of their life, liberty, or property. Whenever someone questions a rule or seeks clarification of a decision, that individual is legally exercising Fourteenth Amendment *substantive* due proc-

ess rights.

Procedural due process relates to the decision-making process used when determining whether a rule or law has been violated. Basic fairness in adjudication is required and has been interpreted by the courts to include the following: 1. Adequate notice; 2. A fair and impartial hearing; and 3. The right to appeal the decision.

Adequate notice includes such procedures as charges, evidence to be used against the person charged, a reasonable amount of time to prepare a defense, the time and place of the hearing, and adequacy of form (oral and written). *A fair and impartial hearing* encompasses elements such as a meaningful opportunity to be heard, state a position, and present witnesses. It also may include the right to counsel, presentation and cross-examination of witnesses, and reviewing written reports in advance of the hearing. *The right to appeal* is not only applicable to our state and federal court system, but is an integral part of our governmental structure as well.

With few exceptions, the due process clause allows all administrative interpretations and decisions, as well as the rule in question, to be appealed through a school district's administrative structure. The decision or rule may be appealed to a higher state or federal administrative agency and then referred to an appropriate court.

Every rule or decision made in public schools is subject to review by another person, board, or court. Most students and teachers are unaware that they have this right of appeal and that it is possible for their decision or rule to someday reach the United States Supreme Court. Due process, as is the case with many legal concepts, resists a simple dictionary definition and tends to be a dynamic rather than a static concept.

A Pocket-Sized History of School Rules

Until the 1970s, court decisions historically supported the concept of *in loco parentis*, which granted to the schools the same legal authority over students as that of a parent. In the absence of "state action" implicit in the Fourteenth Amendment, children who live with parents or legal guardians enjoy no constitutional rights. For example, parents searching their daughter's bedroom without a search warrent would not violate her Fourth Amendment rights

from unreasonable search or seizure, or a son denied the keys to the car would have no right to appeal his parents' decision. This lack of constitutional protection appeared appropriate to educators and hence was applied in the same manner to public school students who similarly enjoyed no constitutional rights. *In loco parentis* allowed schools ultimate authority, provided rules were not unreasonable, capricious, arbitrary, malicious, or made in bad faith. For years this concept fostered a commonly accepted practice of upholding rules that mirrored the thinking, customs, and discipline found in most American homes.

There is legislation that does protect children from their parents and legal guardians. State child-abuse laws and federal child-labor legislation are two examples of society's means of safeguarding children from abusive parental acts. Early court decisions applied this "abuse test" to protect students in public schools, but unless the rule or decision was clearly abusive, courts would not intercede. The law presumed professional educators were more knowledgeable about matters of student development and discipline rather than entrusting such decisions to judges and juries of townspeople. Parents' knowledge that they must carry the burden of proof or their fear of retaliatory acts against their children prevented most from seeking redress in court. However, in situations where parents did seek such redress, school districts generally won the majority of cases reviewed. The only exceptions were instances of substantiated abuse.

Today, courts rarely use the concept *in loco parentis* when writing opinions on student issues. It has been replaced by language which addresses the constitutional rights and responsibilities of students. Although there have been prior questions considered, the *Tinker* v. *Des Moines Independent School District*, 393 U.S. 503, case in 1969 was the first United States Supreme Court decision in the general area of student discipline. The case is cited ritualistically by school authorities as well as student plaintiffs and establishes general guidelines applicable to many school situations. This landmark case involved high school students who were suspended by their principal for wearing black armbands to school protesting the United States' involvement in Vietnam. The students won the right to express their political beliefs as the court stated for the first time:

> . . . First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that

> either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. . . .

Subsequent cases have expanded students' First Amendment rights to include not only speech and expression but also publication and distribution of materials, as well as religious freedom. The Fourteenth Amendment due process and equal protection clauses and the Fourth Amendment reasonable search and seizure rights also form the basis of many court decisions involving school rules.

It is apparent that times have changed from the days when school rules resembled those used in most families. Today, the rules school authorities use must recognize and take into consideration the constitutional rights of students. If, in fact, students do not shed their constitutional rights at the gate, a graphic illustration of the *Tinker* decision might show students dressing each morning in attire selected from their wardrobe of liberties. By the time they have donned their armor of "freedom," buckled on a sword of "justice," and grasped the shield of "equality," they will look like knights of King Arthur's round table. This is truly a formidable image for any teacher to confront each day, one with which educators are unaccustomed and for which some are unprepared. To complicate matters, teachers and administrators are frequently heard to say, "The students have more rights than I have."

We are now at the core, the very heart and soul, of the question facing educators in public schools today. Is there a way to establish and maintain an effective learning environment in our schools, while teaching and tending to the individual student's rights of freedom, justice, and equality?

As foreboding as these student rights appear at first blush, there is another side to the scale of justice. There are, in fact, four sagacious and time-tested public interest arguments crafted in the courts and construed for the precise purpose of denying one's constitutionally protected freedoms. These arguments are as genuine and well-grounded in legal principle and history as the line of reasoning which allows for individual rights. This legal concept is commonly referred to as a *compelling state interest* and simply means that the needs and interests of the majority weigh greater than those of an individual any individual. One of the distinguishing characteristics of judicious discipline is that it helps students understand and appreciate society's desideratum and its applicability to the public school environs.

Compelling State Interest

Prior to the 1970s, when a teacher was asked by a student the reason for a rule, the teacher's response would have been: "Because this is the way we have always done it" or "You will have to learn to follow rules someday, so you might as well learn to follow mine." This response is known as a rule for a rule's sake. The rationale for such rules was to teach students responsibility and the obedience they would need for the "real" world. Rules during this period did not need to consider student rights or the equity of the decision. Today, however, the burden of proof that a school rule is legal is incumbent upon the educators who are responsible for promulgating the rule. A student today who would question the reason for the rule might hear the response: "Let me tell you my compelling state interest for the rule." Although the rule may be the same in both situations, the language and educational posture have changed substantially.

The legality of a school rule is generally presumed, and the burden of proof rests on the complaining student. However, if a rule actually infringes on a fundamental constitutional right, the burden of proof then shifts to school officials to demonstrate a compelling state need. The closer laws come to encroaching on students' substantive rights, the greater the need for justification and clarification by school authorities. For example, to maintain a proper learning environment is a compelling state interest which allows school boards to legally prohibit conduct which is detrimental to the operation of schools. Therefore, a rule which deprives a student of substantive or procedural due process rights must have a direct relation to the welfare of the school.

Now that it is clear that educators must have a compelling state interest to sustain their rules and decisions, this begs the question: What are these compelling state interests? For years our nation's courts have been using four basic arguments in an effort to sustain the delicate balance between the individual and state interest in our public schools. Compelling state interests are:

- Property loss or damage.
- Legitimate educational purpose.
- Health and safety.
- Serious disruption of the educational process.

These concepts bring to mind other points that must be considered. What is serious? Must the disruption have already occurred, or is the threat of a disruption enough to sustain a rule or decision? For whom should the rule be intended, the individual who is exercising constitutional rights or the majority who are disquieted or inconvenienced by the individual's exercise of those rights?

School rules and decisions based on the four compelling state interest arguments will, in all probability, withstand the test of today's court rulings despite the fact that they deny students their individual rights. Teachers and administrators not only have a legal right to deny students' constitutional rights, but also it is their professional responsibility to prohibit student behaviors when the exercise of those rights seriously affects the welfare of the school. It is clearly the school official's duty as an officer of the state to maintain a safe, disciplined, and proper educational environment.

Property Loss or Damage

- "Wear appropriate shoes on the gym floor."
- "Respect the property of others."
- "Take good care of school books."

Care of property is usually an easy concept for students to understand and few would argue their right to damage the school facilities or take the property of others. However, twelve years of public schooling provide students many opportunities to remove or perhaps damage state-owned property as well as the property of other students. Taxpayers, therefore, rely heavily on the sound judgment of teachers and administrators to oversee the care and maintenance of public property entrusted to them. Further, parents and guardians also depend on school personnel to assist in protecting their children's property within the jurisdiction of school authority. In order to insure adequate notice, rules must be explicit, fair, and reasonably related to the loss or damage intended to be prevented.

Legitimate Educational Purpose

- "It is compulsory for all school-age children to attend school."
- "Bring your school supplies and books to class."

- "Our lesson today is the correct use of pronouns."

The public mandates teachers and administrators maintain instructional programs consistent with state law. They are considered by the public as the experts in matters of academic decisions which include content, rigor, and student achievement. Plagiarism, classroom and homework assignments, grading systems, special or advanced placement, and other school decisions and procedures which are designed to enhance students' learning and achievement are illustrations of the scope of this compelling state interest. Courts are reluctant to second-guess educational or curricular decisions based on sound professsional judgment. However, some cases involving the school's conflicts with family values will tip the scales in favor of individual rights, such as students being excused from classes teaching evolution. Generally speaking, all policies and decisions that have a tenable educational motive related to appropriate school objectives would come within the intent of this standard.

Threat to Health and Safety

- "Move carefully in the halls."
- "Students leaving campus during the lunch hour must have permission."
- "Students must have proof of vaccinations before registering for school."

A fundamental purpose of government is to protect the health and welfare of its citizens and, especially, students who attend America's public schools. The importance of health and safety rules are apparent in school situations which expose students to some danger, such as playground equipment and apparatus, industrial education shops and building sites, science labs and projects, in-school and after-school sports, and physical education activities.

Although students may complain about rules which prohibit rough play or require the use of protective equipment, school authorities have no choice but to deny student rights to insure the health and safety of themselves and others. If student rights are on a collision course with a potential student injury, the decision must be in the school's favor. Students will receive lifetime benefits from vigorous health and safety programs if rules concerned with their welfare are

all inclusive, conspicuous, and rigorously enforced.

Courts consistently sustain our government's authority to maintain the health and safety of its people and are quick to deny individual freedoms in such matters. Educators must adhere to and enforce regulations which are in concert with this compelling state interest.

Serious Disruption of the Educational Process

- "Work independently."
- "Keep your hands and feet to yourself."
- "Language and dress must be appropriate for the school environment."

Establishment and enforcement of rules that foster and encourage a proper educational environment are necessary to the efficient and successful operation of every school. Not only do school officials have the legal authority, but they also have a professional responsibility to deny student rights which seriously disrupt student activities. At first glance, serious disruption may be seen as uncomplicated and straightforward; however, consideration must be given to three very important questions that must be balanced before a judicious decision can be rendered. Unless all three questions are weighed carefully, poor judgment will likely follow. The three questions that must be considered are:

What is serious? The language of today's courts stipulates that: "The disruption must materially and or substantially interfere with the requirements of appropriate discipline in the operation of the public schools." Each situation must be decided on its own merits and may vary from one classroom to another in the same building. For example, the acceptable hubbub of a crafts class could be a serious disruption in a social studies class — or maybe not, depending on teaching style and educational purpose.

The Supreme Court in the *Tinker* case considered closely whether students wearing black armbands to school did or did not seriously disrupt the student body. The Court stated:

> Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the school or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the

> children wearing armbands, but there were no threats or acts of violence on school premises. In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.

The last sentence of the court's ruling is important to note because it gives us some definition as to "what is serious." Apparently "serious" means more than just actions and expressions which are unpleasant or make us and others feel uncomfortable. An inconvenienced or annoyed majority should be helped and encouraged to understand the reasons behind these constitutional freedoms and appreciate that someday what they may want to do or say might be upsetting to others.

If the act or expression is serious, the students' rights will give way to society's expectations. If it is not serious, let's help others understand and appreciate the value of and reasons for individual rights.

Must the serious disruption have already occurred, or is the threat of a serious disruption enough to sustain the rule or decision? Again, we turn to the words of the *Tinker* decision for guidance.

> . . . in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom or on the campus, that deviates from the views of another person, may start an argument or cause a disturbance. But our Constitution says we must take this risk; and our history says that it is this sort of freedom — this kind of openness — that is the basis of our hazardous national strength and of the independence and vigor of Americans who grow up and live in the relatively permissive, often disputatious society.

Often rules and decisions are based on the fear that something may occur when, in fact, it may never have happened or is not likely to happen. This, of course, varies greatly from one situation to another and could make congruous decisions difficult. The fact that the school board bears the burden of proof as to whether or not the wearing of armbands ". . . might reasonably have led school authori-

ties to forecast substantial disruption. . . " also compounds the issue. To what extent should a school board be permitted to adopt preventive rules and when is it required to wait "until the horse is stolen before locking the door"? This is a most difficult question, yet one which administrators and teachers must resolve daily. Educators concerned about student rights must seek out and obtain the best information and advice available, balance this knowledge in the context of duty to the state and individual rights, and resolve it with a "best effort" decision. Although possibly disgruntled by the decision, those affected will appreciate the thoughtful consideration and professional demeanor exhibited by the process. Sometimes we should just back off on decisions and demonstrate the patience necessary to make them judiciously.

For whom should the rule be intended, the individual who is exercising constitutional rights or the majority who are disquieted or inconvenienced by the individual's exercise of those rights? After the Beatles made an appearance on the Ed Sullivan show in 1965, several boys in the high school where I was teaching at the time began to wear hair over their ears, then below their collars, and eventually down their backs. They were called "girls" by the other boys and occasionally pushed into a girls' restroom or were sometimes caught in a little-used hallway and given a "haircut." Our principal faulted the boys with long hair for the disruption and suspended them until it was cut. Punishing the small number of students who were expressing themselves by choosing a look that was different from the norm was a common solution to the problem at that time. Only a few administrators, who believed hairstyles represented a student's right of free speech and expression, considered suspending the harassing students. How many principals, for example, would have said, "If you students do not leave these few alone, I will suspend you"? Against whom should you direct your rule? The *Tinker* decision clarifies the issue.

> Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. Judge Gewin, speaking for the Fifth Circuit, said that school officials cannot suppress, "expressions of feelings with which they do not wish to contend."

Although it may be administratively more convenient to threaten

suspension of a few students rather than suffering through the inconvenience and unpopularity associated with helping the majority understand. teachers and administrators today must assume the leadership role and be held accountable for safeguarding individual student rights.

There is a delicate balance required of teachers and administrators in bringing about the educational equanimity envisioned by America's public. Balancing the obligation to provide for the liberties of a single student with the pressures brought about by the clamor of the majority can add up to a lot of heat in the new schoolhouse kitchen. There may well be a need to view rules and decisions from a constitutional perspective which will provide the basis for a well-regulated and orderly climate for learning.

Part II

Part II

The Fulcrum in Practice: Rules and Consequences

ONE of education's more glaring contradictions is an autocratic public school system used as a model for teaching students to be responsible citizens in a democratic society. Ironically, the first personal involvement most children experience with government is when they are compelled to schooling by state compulsory education laws. They are forced into a system of rules and decisions not unlike the authority they encounter at home—an authority which rewards obedience, punishes offenders, and needs no justification other than "I am your parent." It is no surprise that parents and teachers continually ask children, "When are you going to grow up and begin thinking for yourself?" If the management system in our public schools parallels the autocratic environment of most American homes, it follows that educators may be preparing graduates who are unable to understand or function well in a participatory society. In the long run, the benefits of teaching citizenship far outweigh the disciplinary expediency of blind obedience.

Part II develops a framework of school rules and consequences designed to alleviate this dichotomy between schools and society at large. "The Fulcrum in Practice" calls for teaching students about their individual rights and freedoms along with their responsibilities to others: in other words, an educational approach to discipline. As a result, students will not only learn to think for themselves in a democratic form of governance, but have an opportunity to experience the joys and sorrows of being accountable for their own actions.

The Perspective in Practice

The use of constitutional perspective may be illustrated by an example of a rule common to many classrooms across the country. "No chewing gum" is a widely enforced classroom rule conceived and enforced to keep gum from under desks and seats, out of hair and or textbooks, from being popped or chewed noisily, and to prevent the litter of gum wrappers. Envision, if you will, a new student entering your classroom at mid-semester, wearing a three-piece suit, hand-made Italian shoes, carrying a portable home computer, and chewing the biggest wad of gum you have ever seen in anyone's mouth. His admit slip indicates he is the sole heir to a vast chewing gum corporation. Inquiring as to what he is chewing, you are told it is a half-stick of every flavor his corporation manufactures and that he is simply carrying on a family tradition symbolic of a commitment to the value of gum. In other words, chewing a wad of gum is his way of life – a statement he believes he is entitled to make in your class based upon his First Amendment right of free speech. Although the example exaggerates to emphasize a point, there may be a sound legal basis for the student's argument. Running through your mind, however, are four compelling state interest arguments which applied to this situation may weigh more heavily than a gum chewer's individual right of free expression. Let's apply the state's rationale.

First, *property damage* is the rationale commonly used to restrict gum chewing in class. However, this argument breaks down because damage does not occur when students chew gum but damage may occur when gum is no longer in their mouths. Perhaps, the rule against gum chewing necessitates a place to hide it and, therefore, is the major cause of gum damage. *Legitimate educational purpose* would not suffice unless you wanted to teach the evils of chewing. *Health and safety* would be a good reason to enforce a rule against gum chewing during physical activities as a student might choke on the gum. Rules against popping and chewing loudly should be enough to prevent a *serious disruption*. In order to deny the student's right of expression, teachers and administrators today not only face the challenge of sustaining at least one of the four compelling state interests but also must bear the burden of proof. If none of the four compelling state interests are reasonable or applicable, teachers and

administrators would find it difficult to justify a rule which has been taken for granted.

Instead of using rules and punishments as a means of controlling gum activities, approach the matter as an educator should – *teach students how to use gum properly*. I am reminded of a workshop on student rights I recently presented to a group of school administrators and an anecdote an elementary principal shared with us about his experience with "the gum problem." He had been a teacher in his building before being appointed principal and was familiar with the problems they had with gum damage. When he became an administrator, one of his first acts was to revise some of the rules. During teacher inservice in September he announced these changes. One change in particular reversed the ban on gum chewing. The new plan suggested that the faculty spend some time during the first day of class teaching students how to use gum properly. Teachers instructed their classes in the appropriate way to chew gum, how to wrap it in paper when out of their mouths, where to discard the gum, and how to care for the empty wrapper. Curious about the effect of this educational approach, he asked the building custodian about three weeks into the school year if there was a problem with gum in the building. The custodian replied that he was surprised by the fact there was no gum anywhere around school, not even wrappers on the floor. "I don't know what you did," he said. "You are the toughest principal we ever had here." Three weeks later the conversation again surfaced and still no evidence of gum damage was found. "You really are tough," the principal was told. "What did you do?" The principal explained that the old rules were replaced by a more positive educational approach to teaching responsibility. The custodian listened in disbelief and, without a word, walked away shaking his head.

Too often educators find themselves inventing an endless parade of rules hoping to create the illusion of being in control. Many are convinced that rules and punishments teach responsibility or believe a "line in the dirt" approach to discipline is what children want. Once a teacher's line is crossed, however, the illusion of being in control begins to unravel. Until students are allowed to have and begin to feel a proprietary interest in school and classroom rules, classroom control and a good learning environment will always be at risk. Teachers and administrators must move away from the appearance of a teacher-imposed, "hard-line" method to an educational approach emphasizing our skills and abilities as professional educators. We

should focus our efforts on teaching and modeling the attitudes and behaviors appropriate to learning and good citizenship. Students are far more likely to develop good character and become accountable when they are provided an opportunity to learn and actively participate in a democratic learning environment. When they waiver from these democratically imposed boundaries, they need an educator nearby, not a parent substitute or a law enforcement officer to pull them back into line. When an academic or behavior problem does occur, it is an unswerving and dedicated educator who pauses to think—"What needs to be learned here?" Every student problem then becomes an educational challenge. How much more effective our schools could be if we would teach the rationale for society's boundaries and the value of compliance. If and when we must punish, it should be appropriate and provide a learning experience for both educator and student. Teachers and administrators must approach discipline as professional educators and do what they have prepared themselves to do—find ways to help students learn and develop the attitudes and knowledge necessary to live productively and responsibly in a democratic society.

Formulating School Rules

There are limits to the latitude of legislative authority school officials have when structuring rules appropriate to their teaching or administrative responsibility. For example, rules governing a classroom are not binding throughout the school; a principal's authority ends at the boundaries of the school grounds; and central office administrators' control extends only within the district. A teacher, for example, may adopt any classroom rule so long as it does not violate the rules of the principal, superintendent, school board, and state department of education. The classroom, school, or district structure cannot subtend state and federal legislative laws, the weight of state and federal case authority, and the United States Constitution. These are "the givens"—rules that are already decided and, good or bad, must be followed.

Faced with all the legislative and administrative strata, educators may feel at a loss trying to locate and assimilate all the pertinent laws. These established rules and regulations are available to educators

through a number of official state publications. First, examine the state administrative laws affecting public education available through state departments of education. These laws are most commonly referred to as state department administrative rules or codes. Second, investigate school board policies usually found in the district office or school libraries. Third, if there is a negotiated collective bargaining agreement, know the rules agreed upon by the teachers and the school board. Fourth, read carefully your principal's rules regarding building policies and regulations relating to teacher rights and responsibilities. Lastly, review a copy of the student handbook and know the principal's rules affecting students. If state and local officials have done their job well, none of these rules will violate any existing state or federal case law or legislation. After teachers become familiar with these publications, their authority for creating classroom rules is limited to what has not been previously decided. Know your boundaries and the rules you cannot change. It's hard to say this delicately, but violating your administrator's rules is commonly known as insubordination.

The student handbook and respective classroom rules are, for most parents and students, a first impression of the resolve as well as the compassion of their school's environment. Rules that generate a positive feeling of student support through an educational and counseling approach to learning help alleviate the fears and belligerence attributable to the anticipation of encounters with stereotypical authority figures. Because first impressions are so long remembered, school personnel should devote time and resources to shape rules that are clear and concise, emphasize the behavior desired, and, whenever possible, the reasons for the rules. For example, instead of "no street shoes on the gym floor," create a rule which elicits responsible decision making, such as, "Wear shoes which will not damage the gym floor." "Move carefully in the halls" might replace "No running in the halls." Clarify, describe, and teach the desired behavior and avoid the use of negative statements. The "do not" rules should be necessary only in cases of potential danger or compelling need for clarity.

A rule should first be written in broad general terms. It should be inclusive enough to account for all possible student behaviors. The four compelling state interests described previously are a good beginning and certainly meet the all-inclusive criteria. If, however, these four were the only rules, they would be unconstitutionally

vague because of their breadth and, as a result, violate students' procedural due process rights to adequate notice. For instance, a rule preventing school property damage places students on notice not to destroy the school, but this rule is not specific enough as to what behavior would be injurious. It would not, for example, sufficiently inform students that the gym floor is more susceptible to damage from regular street shoes than are floors in the hallways and classrooms.

An initial broad heading should be followed by specific examples of student behavior. The list need not be exhaustive but should encompass a sufficient number of examples to facilitate awareness and understanding of the rules. Include rules which are learned from past incidents and problem areas that could be reasonably anticipated. Choose from a variety of school programs and activities which will provide students adequate notice as to the sum and substance of the general headings.

Four major headings followed by appropriate examples are easy for students to remember and educators to manage and enforce. This two-pronged approach will address the students who argue, "The rules didn't cover that," as well as students who claim, "I didn't know what you meant." The law does not require school authorities to have stated all of the rules in writing before school begins in the fall. Courts will allow reasonable additions and deletions during the school year. The central question is whether the school can show cause for the rule change and whether the student had adequate notice. Any of the compelling state interests should withstand this test of reasonable cause.

Write rules explicitly and clearly for the educational level of those affected. It is imperative that students fully understand the meaning of rules in order to meet the notice requirement of the Fourteenth Amendment. "Ignorance of the law is no excuse" is a common phrase but has little application to school-aged children required to attend public schools under our compulsory education laws. Almost all are minors, some with limited English-speaking ability, while others may be handicapped. Merely giving students a copy of the school rules as they enter would not be sufficient notice in many cases to legally enforce those rules.

The First Day of Classes

Sometime after an appropriate welcome and before the first week is over, ample time should be devoted to familiarizing students with their rights and responsibilities in classrooms as well as in the whole school setting. If the student handbook is not distributed at the office during registration, it is usually handed out the first day of classes. In either case, students and their parents or guardians must receive their own copy of the rules. Care must be taken that absent students and late arrivals also receive their copies. Allocate the necessary class time to discuss the handbook as well as the rules specific to each classroom. Encourage questions and discussion about the interpretation and meaning of the rules and regulations. Point out the rationales for the concepts in the general headings, talk about individual and group responsibilities, and exchange personal feelings and attitudes about rules in general. Sometimes an open discussion of rules and behavior will prevent feelings of being ignored and create a sense of responsibility for the adopted classroom policies.

While it is important to establish the boundaries necessary for a positive educational atmosphere, it is equally important to communicate to students the fact that they are an integral part of school operations and that their opinions are valued. Often a student handbook conveys a feeling of rules chiseled in stone with little or no student involvement. Temper this perception by writing in some of the basic constitutional principles reviewed in the first part of this book. Depict the scales of justice balancing the needs and desires of the majority against the civil rights of one lone student. Discuss the concepts of freedom, liberty, justice, and the obligation of the school to maintain a well-regulated, effective educational system. Introduce the four compelling state interests and discuss the importance of each in our nation's government. Emphasize the similarity between classroom and school needs and those public interests which affect the individual lives of students and parents. Language cited from the *Tinker* case will help to clarify the concept of how one student can affect what the rest of the class does. Provide classroom examples of individual rights which are expendable when they conflict with the rights of the majority. Explain how teachers and administrators have a public obligation to balance the four compelling state interests with students' individual freedoms. By involving the students in a dia-

logue of reasons for our country's rules, the teacher is not only teaching citizenship and critical thinking skills, but has brought about a sense of awareness for upholding the individual rights of others. The return on this investment of time and effort, free from the personal bias of school officials, is a student's proprietary interest in school and a feeling of accountability for rules and consequences grounded on our nation's system of government.

Commensurate and Compatible Consequences

After developing the compelling state interests concept and the rules necessary to maintain a learning environment, the next step is to draft a list of workable consequences for infractions of the rules. Students' Fourteenth Amendment rights of adequate notice include not only knowledge of the rules, but also an understanding of the consequences they can expect if the rules are violated. These consequences should cover a variety of alternatives ranging from educational and mentoring approaches to the possibility of students losing their right to attend school. Educators must avoid voicing or publishing specific consequences before behavioral problems occur, such as, a student caught cheating on a test will automatically receive an F for a grade. Teachers who play their hand prior to the act often box themselves into a poor decision that, when examined in the light of extenuating circumstances, could have been resolved through use of a more appropriate consequence. Educators who give themselves options and use them judiciously are more likely to have better discipline and enjoy better rapport with their students.

I recommend educators consider consequences commensurate with the rule violation and compatible with the needs of the student and the school. *Commensurate* denotes that the consequence is consistent with and flows logically from the student's behavior. *Compatible* represents a broader view of the problem and includes issues ranging from the students' personal self-worth and academic achievement to the effect on school and classroom environment. Compatible consequences embody a holistic approach to resolving student behavior problems and imply a resolution for which all ramifications and possibilities are carefully considered in light of the best possible educational interests of the student.

For example, a commensurate consequence might logically have a

student who defaces school property scrub graffiti from the walls. To be compatible this task could be done after school to prevent missing class and to avoid the ridicule of peers. Another approach would be to solicit a compatible consequence from the student or ask a student to choose something compatible between two commensurate consequences—a parent conference, perhaps, or a talk with the school counselor. Either would be effective as long as both commensurate and compatible issues are carefully and thoughtfully weighed when determining and administering student consequences. Enumerating and discussing with students the concept of commensurate and compatible consequences will serve to give notice that the school intends to act upon rule infractions and will, in good faith, show a commitment to a fair and equitable solution.

Class discussion of possible commensurate and compatible consequences is an important aspect of student due process rights. Students have a right to know what they can expect for minor to major infringements of the rules. If students are involved in formulating consequences appropriate to the rule violations, they will not only understand the supporting rationale, but are more likely to accept the consequences. Just as students are taught the reasons for the rules, they need to know and discuss the reasons supporting the consequences of their actions. The time and effort spent on commensurate and compatible consequences will provide the notice needed to establish confidence in the teacher's professional ability and resolve in pursuing student indiscretions. It also works to avoid embarrassment and anxiety caused by "not knowing what to expect" or a "keep them guessing" discipline style which often leads to students' sullen indignation and contempt for the educator personally.

For visual purposes, I have developed a chart with some ideas for school and classroom rules based on the four compelling state interests and applicable commensurate and compatible consequences. My purpose is to present these concepts together in outline form to illustrate how they might be organized when presented to students. These examples are not meant to be all inclusive, but to serve as illustrations of the possibilities that can be adapted to various teaching and administrative styles.

Though it is preferable to devote adequate class time to rules and consequences, the logistics may vary greatly from one classroom to another. Self-contained classrooms where students are together most of the day, all year long present greater opportunities for student

OUTLINE FOR FORMULATING RULES AND CONSEQUENCES

Property Loss & Damage

●Rules

Rules should cover both school and personal property. Writing and discussing these rules offers a good opportunity to teach students respect for the property of others as well as ways to be responsible for and take care of personal property brought to school.

●Examples of Consequences

Could include:
- apology
- clean it up
- give it back
- restitution
- community service project
- counseling
- conference with parents
- loss of privileges
- detention
- suspension
- expulsion

Legitimate Educational Purpose

●Rules

These are rules and decisions made by legislators and professional educators about educational content and process. It is difficult to include student input but important to discuss with students the educational rationale behind the rules that direct their educational standards and requirements.

●Examples of Consequences

Could include:
- redo the assignment or take another test
- complete an alternate assignment
- study with a tutor
- a private conference
- counseling
- conference with parents
- loss of privileges
- detention
- suspension
- expulsion

Health & Safety

●Rules

Rules should be drafted to protect both the individual student as well as the others in the group. A good discussion topic for students to learn to appreciate a central role of government.

●Examples of Consequences

Could include:
- apology
- complete a research report
- community service project
- a private conference
- counseling
- conference with parents
- loss of privileges
- detention
- suspension
- expulsion

Serious Disruption of the Educational Process

●Rules

Rules should reflect the importance of maintaining a positive learning environment and emphasize responsible behavior to self and others seeking to learn. Discuss the importance of being able to handle minor distractions which would allow others to exercise certain individual rights, whom the rule should be directed against, and whether or not there is a legitimate need for the rule. This provides excellent material on student rights issues and offers a good opportunity to develop critical thinking skills.

●Examples of Consequences

Could include:
- apology
- a private conference
- counseling
- conference with parents
- community service
- loss of privileges
- detention
- suspension
- expulsion

input and discussion than classes which meet once a day in forty- or fifty-minute sessions for part of the school year. Teachers need to make adjustments according to the time constraints demanded by their teaching assignments. In some cases it may entail only a brief review of the course outline, academic and behavioral expectations, and a reference to *Judicious Discipline* made by holding up a copy and encouraging students to read it. If students and parents know this book will be the basis for decisions affecting their property and liberty interests, many may feel motivated to check it out.

Occasionally, teachers will want to encourage a democratic environment by initiating a student forum to discuss class needs and formulate rules by majority vote, a commonly perceived characteristic of a democracy. However, our democratic form of government only allows us to vote on those issues which are not protected by the Constitution. For example, a class may not decide by majority vote that an orthopedically impaired student should not be allowed to go on field trips because it would slow down the group, or that a pregnant girl may not run for a student body office. There are occasions, especially in the area of student privileges, when majority votes are appropriate and should be encouraged. For example, allow students to decide which band will play at the dance or whether to serve ice cream or popcorn at the class party, etc.

The advantage of teaching and administering rules founded on our nation's laws is that teachers and administrators are not personally identified with the rules. When personal biases are used as the basis for school rules, school authorities are likely to become personally involved, thereby causing an escalation of a personality conflict which has no relevance to the student's education. A constitutional perspective allows teachers and administrators to remain objective, analogous to a third party whose role it is to shepherd the relationship between the student and the rules. The fruits of this labor are clearly felt when calmly responding to an inquiring or quarrelsome student, "If you don't like these rules, you won't like the rules into which you will be graduating." The more than two hundred years of wisdom and authority represented by our Constitution, when properly presented and discussed, can work wonders for teachers and administrators seeking to bring about a school filled with mutual regard and respect.

Part III

Part III

The Balance: Synthesis and Evaluation

CONSCIOUS effort to promulgate judicious rules and decisions is the legal and ethical duty of today's educator and the foundation on which learning good citizenship rests. "The Balance" is a synthesis and evaluation of student constitutional rights counterbalanced with the practical realities of student discipline in the public schools. Although some of the subject matter examined in Part III may appear at first blush to have little to do with discipline, the subtle nature of discriminatory practices cuts deeply into students' feelings of self-worth and is often the force that puts students "at risk" within the school system. For instance, how many times must a teacher repeat jokes demeaning a student's ethnic heritage before the student loses interest in school or begins a pattern of disruptive behavior? Often it is a risky educational environment which spawns and serves as the lifeblood of "at risk" students.

Part III offers strategies and techniques for implementation as well as ideas and suggestions for change—a spring from which teachers and administrators can draw as they formulate their own rules and related decisions accordant with their special needs and problems. It is not meant to include all of the disciplinary issues facing educators, but to be representative of school policies and procedures which affect student rights and responsibilities in the public school environment.

Whereas Part I presents a framework which is well established and

has served our nation for two hundred years, the parameters presented in Part III are constantly changing. The dynamics of "The Balance" require educators to stay abreast of new legislation and the latest court decisions in an effort to meet society's increasing demands on public schools. As we search for ways to create an educational environment which provides an equal educational opportunity for all students, keep in mind the scale of justice with one student looking across at all the other students and thinking how heavy their needs and demands must weigh. "The Balance" is intended to help strengthen our public school system by offering educators a sensible, consistent, and legal rationale for rules and decisions affecting student achievement and behavior.

Compulsory School Attendance

As necessary as our compulsory attendance laws may seem, they are often a source of problems for educators. Most school districts are governed by state laws which mandate a specific number of days of required attendance for high school graduation. However, when strictly enforced, the attendance requirement may not appear to be reasonably connected to its original intent. For example, a high school senior with a combined SAT score of 1,250 and more than the permissible number of absences, has a good argument that the attendance requirement should not apply. The question for the principal is whether to allow the student to graduate or require the student to return the following fall term to make up for time missed.

Although allowing a student who does not meet the attendance requirement to graduate violates the law in many jurisdictions, a 1,250 SAT score suggests that student would not burden society upon graduation. This is a good illustration of the dichotomy many administrators face between "the letter of the law" and the legislative purpose of compulsory education. Although not flawless, rules pertaining to the number of school days required for graduation should be used as guidelines and the decision based on the facts relevant to each case. Attendance rules not only serve to coerce and extrinsically motivate students to attend school but also broadcast an educational message that school attendance is important for learning.

Another issue related to attendance is dropping a student from the

roll sheet after a specific number of *absences*, usually between ten and twenty days. This rule has value for the smooth administration of a school and legally must include an appeal process for students who wish to return during the same grading period. At question is not the validity of the rule or the appeal process, but rather the individual circumstances which serve as the substance of the appeal. Administrators need to carefully consider each case and base decisions on whether or not the student is able to satisfactorily complete the coursework without causing undue hardship for the teacher. If the student can show an ability to adequately complete the work without causing a serious disruption to the educational environment, permission should be granted for the student to complete the required work regardless of the motive behind the absences. Too often a student's reasons for extended absences will lead administrators into a quagmire of family values or personal freedoms and therefore should not be the basis for the student's return. As professional educators, decide the issue of readmission based on sound educational practices and avoid moral judgments. The purpose of attendance is to facilitate learning. If students can demonstrate that they are learning or have acquired "an education" by other means, they should not be denied the opportunity for an education or its subsequent benefits as punishment for nonattendance.

Another common problem where administrators often find themselves in a quandary is over *excused* and *unexcused absences*. For instance, two students skip school all day to play video games together at the local arcade. One parent is willing to write an excuse and the other parent is not. Although they were together during their absence, the students will experience very different consequences when they return to school. The excused student will be given reasonable help to make up the schoolwork missed and the other will probably be punished with a short suspension and thus further removed from the benefits of an education. Two questions come to mind. Should we remove from the school and relinquish to parents the decision for excused and unexcused absences? And, if attendance is important to learning, why do we further exacerbate the problem with more missed class time and punish a student with exactly what our rules forbid? This action lacks educational as well as disciplinary congruence by attempting to resolve the problem through punishment. Certainly students need the benefits gained through continued class attendance; therefore, consequences compatible with good edu-

cational practice should be the result of our decisions. Administrators can avoid these antithethical situations by not distinguishing between excused and unexcused absences and only keeping records of student absences. If a student without a prearranged absence is not in attendance, contact could be made with a parent or guardian informing them of this fact. Hold parents and guardians accountable for whatever punishment is meted out at home and treat the problem at school as an academic matter.

When students miss class they lose out on a significant amount of learning occuring in the normal course of classroom activities which cannot be quantified through testing or other methods of grading achievement. Why not provide absent students with *educational alternatives* closely related to the classroom assignments and activities missed during their absence? Some educational alternatives for absent students might be a term paper covering the subject matter discussed, a book review on the subject, or several pages outlining the chapters missed. To alleviate the overload generated by educational alternatives and make-up work, schools could provide tutors and schedule times during the day and evening when tutorial help would be available, extend library hours for students, and encourage parents and other family members to become involved in educational alternatives. Regardless of the reason for the student's absences, make-up work and late assignments should be accepted to insure those students an equal educational opportunity. Well-planned alternate assignments not only offer students their right to equal opportunities, but recognize individual differences in learning styles and emphasize the importance of class rigor and uncompromised academic expectations. Alternate assignments are not punishment for absence but an assignment in lieu of attendance based on the teacher's legitimate educational purpose. A rule such as this should encourage student attendance and place the emphasis where it belongs, on the importance of educational decisions. If an administrator chooses to punish students for skipping school, he or she should consider denying a student's privilege to participate in extracurricular activities or school-sponsored parties and dances. Finally, eliminating unexcused absences releases educators from the time-consuming task of making no-win decisions based on the omnium-gatherum of family and personal values.

Tardiness is a difficult problem to manage with any degree of consistency. Although students may miss very little class time, being

tardy distracts an ongoing class and must be attended to by the teacher. As with absences, avoid punishments which include more time away from educational opportunities. Approach the problem with some of the ideas enumerated in the chart listing examples of consequences cited in Part II. If students know that teachers have a number of professional options and that they are willing to use them consistently, tardiness should become infrequent and no longer be viewed by the teacher as a behavior problem. Teachers are in the best position to regulate tardiness as students move between classes and should be given the authority to solve this problem. Effort must be made to develop a pattern of consistency for managing tardiness to avoid wide differences among faculty consequences. Administrators should only become involved when students arrive late to the school building or with chronic problem students. To approach tardiness as an attitude problem will go further to alleviate the problem than if it is viewed as foul play or as crime in need of punishment.

Suspension is the term used for temporarily denying a student the right to the benefits of public education. Suspensions range from very short in-house suspensions to removal from school for a period not to exceed seven to fifteen days, depending on state laws. Because the absence is brief, a student suffers no substantial loss of educational opportunities. For this reason the law accords students only procedural due process rights. These procedural rights require the administrator to provide at least: 1. An oral or written notice of the charges, i.e., the rule the student violated; 2. A summary of the evidence against the student, i.e., a teacher witnessed the infraction; and 3. An opportunity for the student to be heard, i.e., the student has a chance to tell his or her side of the story.

When the above criteria are met, except for state laws to the contrary, the administrator's decision is final. If the student demands an attorney or presentation of witnesses, an administrator may choose not to comply with the student's demands unless local law holds otherwise. Although courts have dealt only with suspensions from school, fair and consistent building policy would require the same three steps be taken by teachers who consider the removal of a student from the classroom. On most occasions, if a teacher would take the time to hear the student's side of a story, a better decision than leaving the classroom might be made.

Expulsions are for serious offenses or for students who do not

benefit from public education. They are for a longer duration than suspensions and usually result in the loss of grades and credits as well as a substantial deprivation of educational opportunity. For this reason a student enjoys both substantive and procedural due process rights. Not only must schools provide the charges, evidence, and a hearing; they must also substantiate the reasons for expulsion and prove either their detrimental effects on the learning environment or that the student will not benefit from further schooling. In addition, the student has a right to be represented by counsel, review all records, bring witnesses, cross-examine, receive a complete and accurate record of the proceedings, and appeal the decision.

A student removed from school for a period of time longer than the state limits for a suspension is considered expelled, and is entitled to the process due an expelled student. *Handicapped students* have additional rights that do not flow to non-handicapped students. Because a handicapping condition may be cause for a suspension or expulsion, federal and state laws require that other procedures be followed. To stay abreast of the changing law in the field of special education, administrators should seek advice from special educators and legal counsel in matters pertaining to both suspensions and expulsions of handicapped students.

The decision to suspend or expell a student as opposed to the use of educational or counseling approaches or even appropriate punishment is often a difficult decision for educators to make. Our nation's courts are faced with the same question when they must decide a fitting and proper sentence for convicted criminals. How better to prepare our young citizens for the "real world" than to use the same rationale our criminal courts use for incarceration? There are four basic public interest arguments used to remove criminals from society and they are:

1. *To protect society from the criminal.* Criminals are so dangerous they are a menace to everyone and "should not be walking the streets."
2. *To teach criminals a lesson.* They are reaping the consequences of their illegal acts and will be deterred from committing crimes in the future. They are "paying their debt to society."
3. *To teach others a lesson.* To be caught and imprisoned serves as a deterrent to others who are thinking about committing an illegal act. We will all "think before we

act."

4. *To rehabilitate criminals.* Remove criminals from their lawless environment and provide them with skills and attitudes for success when they return to society. We will "help them get started again."

Some decisions using these public interest arguments are easier to make than others. For example, a student who is a threat to others at school, such as a drug dealer or a student who continually harasses others, should be removed from the school setting based on the first argument. But what about the second and third reasons which are designed to teach a lesson by means of paying a debt, the fear of having to pay a debt, or the punishment inherent in banishment and isolation? Use of this rationale over other consequences may or may not be the best decision. At times administrators will use the fourth argument to suspend students who just need time to "cool off" and reflect on what they have done and what they want to do with their lives. These concepts will not insure wisdom when removing students from educational activities, but they can serve as a rational way to approach suspensions and expulsions. They also serve as a basis for clarification to students and parents who seek explanations and the reasons for these administrative decisions. Denying students their right to a public education, for whatever the duration, should always be carefully considered. If an administrator feels that banning a student from classes or school is the most commensurate and compatible consequence, then he or she should proceed with deliberate speed and confidence that this action is in the best interests of the student and public education.

Grading Practices

Grades are perceived by society as a summation of achievement; however, the excessive entanglement between *achievement* and *behavior* is an issue of ethical and legal concern. The use of grade reduction or augmentation has become all too commonplace in an effort to find a cure-all to control student behavior. Grade reduction for unexcused absences, missing a concert, and late papers are only a few examples of student behaviors affecting achievement grades. The ethical and legal problem inherent in these attempts to deter undesir-

able behavior through changes in achievement records is the fact it misinforms others about the student's mastery of the subject. Grades affect students' Fourteenth Amendment liberty interests when they are used by others to decide such future opportunities as scholarships, admission to other classes, college, or job prospects. An academically gifted student denied a college scholarship due to an occasional unexcused absence figured into an otherwise good grade lacks congruence. The letter grade on a transcript is perceived as the student's level of skill and understanding of a subject matter; rarely would a reader be privy to information accurately detailing the fact that the grade reflects entanglement of behavior and achievement standards.

I am reminded of a former student who returned to visit with me several years after completing one of my educational law courses. As an experienced English teacher she had always reasoned that, with many papers to grade, a strategy was needed to encourage students to complete their work on time; the alternative she always feared was a deluge of papers at the end of the grading period. Lowering grades on late papers had been a satisfactory solution prior to taking my class; however, on examining the issue in light of student Fourteenth Amendment rights, she had felt unsure. After trying several alternatives that did not work, she finally settled on a plan that did not deny student liberty interests. At the beginning of each new term she begins her class with a review of the course requirements, one of which is a short composition due every two weeks. She continues with an explanation that these assignments will be graded and returned within a few days. She expands on the educational value of writing practice, learning from mistakes, and the benefits of her written remarks and suggestions. In addition, the class is informed that she has over one hundred and fifty students a week and has budgeted enough time to correct and return papers handed in on schedule. She emphasizes that it is to their educational advantage and her administrative convenience for compositions to be submitted on a regular basis. Next, she points out two cardboard boxes on her desk. One is labeled "papers on time" and the other "late papers." She concludes by informing her students that papers coming in on time will be corrected and returned as promised; late compositions will be graded and returned sometime next semester or as time allows. Students can expect an "Incomplete" on their report cards until the papers are corrected and the grades can be changed. In other words, late papers

—late grades. She smiled and told me she now has no problem with late papers. No longer does she constantly have to remind students of deadlines, parents have ceased to complain about unfair grades, and her students are accepting the responsibility for turning in their work on time. While this solution might not work for every teacher, it is an illustration of placing the responsibility on the student for late assignments and computing grades which reflect academic achievement and not behavioral acts or attitudes.

Schools that allow and encourage the judicious use of an "Incomplete" offer faculty many more opportunities to be creative and fair in their grading practices. This option does not have the effect of diminishing class rigor or expectations and sends a message to students that until all assignments and tests are complete and submitted, they will not receive a grade or credit for the class. Prudent administrative policy would allow a reasonable time for students to make up required work. This "reasonable time" could vary depending on the student's need for course credit or the availability of the teacher involved. If coursework is not completed within this time frame, the "I" could be changed to an "NG" (no grade). However, changing an "I" to an "F" would imply the student did complete the coursework but failed to understand the subject matter. An "NG," on the other hand, would not misinform the person interpreting the transcript and simply means the student did not complete the course. A course needed for graduation credit or as a prerequisite could be retaken or, if in the professional judgment of the teacher there is enough evidence to determine the student's mastery of a subject, an achievement grade could be compiled from the information available at the time the grade was needed. When and whether the student should receive a grade and credit should remain the professional judgment of the teacher based upon reasonable course expectations. Notwithstanding the authority teachers have to determine curriculum and standards for grades, a student's liberty does not hinge on what the teacher thinks the grade means, but what the widespread consensus of those who interpret the grade think it means. For example, lowering a grade for a late assignment in a writing course would be different from lowering a grade for a late assignment in a journalism class. Whereas teaching and learning punctuality to meet press deadlines would be an expected achievement in a journalism class, it would not be an expected achievement for a writing class. It is important to know and incorporate only those requirements and standards for grading

which are commonly understood to be achieved within the course title. A plausible test would be to ask employers and college admissions personnel what they believe an "A" or a "C" means in classes titled "Beginning Welding" or "Algebra 1."

Elementary schools have a greater opportunity to be flexible and innovative when reporting behavior and achievement. Secondary schools are confined to using a letter grade system, culminating in a G.P.A., which is used by colleges and employers for determining future educational and employment opportunities. Elementary grade reports are intended as information for parents or guardians and professionals with a demonstrated interest in student achievement. Because G.P.A. is not necessary, elementary schools have an opportunity to devise a report card that would include more than just a letter grade. For example, the report card could include a letter grade which approximates students' achievement for comparison purposes; a place to list incomplete or missed assignments and tests not taken; the number of late arrivals; absences; and behavioral information that can be quantified, such as cheating in class or fighting on the playground. Instead of trying to use one letter to tell the whole story, elementary teachers could have a reporting system which allows teachers to demonstrate a complete and accurate picture of student achievement and development.

Often students caught *cheating* on exams or *plagiarizing* material are given an "F" which is averaged with their other grades or used as a final grade which results in a loss of credit. An "F" denotes a failure of ability or achievement which misinforms those who will evaluate the grade. A more equitable approach is to consider cheating or plagiarism as a behavioral matter dealt with by the use of commensurate and compatible consequences. For academic evaluation purposes, a student caught cheating on an exam might be offered a make-up exam in another format or a broad essay question which could be graded quickly and be sufficient to evaluate what the student does or does not know about the material tested. Plagiarizing could certainly mean completing another paper covering the same subject. In addition to providing for alternative academic requirements, conferences with parents or guardians and/or counseling sessions with the student may be used to illustrate and explain that the problem is much deeper and more serious than lowering a grade. With imagination and planning, the consequences can function to

deter misrepresentations of student achievement and protect student liberties. Separate academic alternatives from well-chosen consequences when dealing with student behavior and use both in the always difficult arena of cheating and plagiarizing.

Attendance, as previously discussed, is often comingled with the academic grade. If students choose not to attend or are ill, offer an alternative means of learning and then grade accordingly. *Class participation* is often used as a criterion for grading and is typically limited to those whose hands are raised. In-class contributions can be quantified and certainly qualify as academic performance. However, to avoid being discriminatory, teachers should call on each student the same number of times to allow an equal opportunity for a grade. Grading on *effort* is appropriate only if there is a place for an effort grade on the report card. Effort denotes a student's behavior and when combined with achievement would misrepresent the final grade. *Improvement* should not be averaged with skill or understanding. Improvement implies a change, but it does not provide baseline data or to what extent the student improved. *Extra-credit* classwork is acceptable if it is relevant and related to the achievement reflected in the meaning of the grade. The same is true of *spurious course objectives*; e.g., lowering grades for not showering in physical education as opposed to not knowing how to shower properly, or missing a choir concert versus not meeting the required number of performances for a grade.

The balance between an achievement grade used to control behavior and its meaning and significance to colleges and employers must tip in favor of students' liberty interests. Every effort should be made to make grades an accurate reflection of students' academic achievements for the clarification of those who will ultimately use the G.P.A. Behavioral information is available through other sources: e.g., telephone conversations with parents, teachers, or employers; letters of recommendation; conferences. Consider one exaggeration to make a point. Wouldn't all pre-operative patients hope their surgeon's successful completion of medical school was not due to grades inflated by effort and improvement? Again, the issue is not what the educator thinks the grade should mean, *but what those people interpreting the grade believe it to mean.*

Punishments

Judicious use of punishment must begin with a clear perspective of the *gravity of the offense*. Well-chosen disciplinary measures should be in proportion to the offense and reasonably defensible for the purpose used, e.g., to deter improper conduct, to punish, or to rehabilitate the student. Age, as well as the mental, emotional, or physical condition of the student are factors which must be considered when determining reasonable punishments. Punishment must never be used in a way that can be construed as malicious, cruel, or excessive. Student handbooks and teachers must provide students with *adequate notice* outlining the possible punishment for violations of specific school and classroom rules. Students have a valid argument when they admit they knew it was against the rules for them to copy another's answers on a test, but were not aware that cheating could result in punishment as severe as expulsion. Punishment as a deterrent or a legal consequence is only as effective as the sufficiency of notice.

Withholding privileges is judicially considered an acceptable punishment and similar to the type of punishment most children would experience at home. However, an activity from which a pupil is barred because of misconduct must fall within the category of privilege rather than right. Legally, students have a right to participate in basic curriculum activities as opposed to those considered "extracurricular." Occasionally there is a fine line between the two types of school activities. For example, a senior who seriously disrupted the school environment on the eve of graduation has the right to graduate on the basis of having met the academic requirements, but the privilege to participate in the graduation ceremony may be denied as a reasonable disciplinary measure. Denial of an extracurricular activity may not be arbitrary. It must be reasonably related to student behavior. Exclusion of a student should not occur without careful consideration and sufficient evidence to make this often difficult decision.

Corporal punishment has long been used to punish students for unacceptable behavior and is still a legal option for administrators who choose to adopt it as school policy. If permitted by state law and

authorized by a school district, judicious administrative procedure should include the following: 1. Parental approval; 2. A due process procedure which includes charges, evidence, and the student's right to be heard; 3. Reasonable administration with moderation, prudence, and consideration of the gravity of the offense and the physical condition and size of the student; 4. Be administered in private apart from the presence or hearing of other students; 5. Be witnessed by a certificated staff member; 6. Be properly recorded and put on file as a matter of record; and 7. Notification to parents or legal guardians which informs them that physical punishment has been administered. Parents or guardians who choose not to allow corporal punishment to be administered to their children should be offered an alternative form of discipline that would be commensurate and compatible with school rules and the students' transgression.

Punishing the group for the acts of one student is seldom successful and often results in frustration on the part of both student and teacher and impinges on the innocent students' liberty interests as well. If the culprit cannot be identified with reasonable inquiry, it is better to desist and take appropriate action to prevent the incident from recurring. To *reprimand* and *demean* students in the presence of their classmates not only has a detrimental effect on their self-concept but often intensifies into a spectacle of human emotions and verbal exchanges which would be best suited to private conversation. Confidentiality and liberty are negated by the public release of professional information or personal feelings. Punishing students for the *actions of their parents* or others over which they have no control leads to a feeling of injustice and hopelessness that comes from being caught in the middle. For example, students reprimanded for tardiness due to the negligence of the parents who wake them creates confusion and a "what's the use of trying" attitude. Before *keeping students after school* consider the foreseeable problems related to their returning home safely. The embarrassed faces of fidgeting students sitting *outside classroom doors*, sheepishly eyeing those passing by, is a constant reminder of the effect public banishment has on students' self-concepts: a critical determiner of future successes and liberty interests. Whenever possible, reprimand and punish students privately and avoid the public exercise of authority or exaggeration of the students' misdeeds and mistakes by constantly bringing them up. Writing students' *names on a blackboard* can be equally detrimental and have the same psychological effect as spank-

ing students in front of the class or placing them in the hall. Punishing students at school for participating in *activities occurring off-campus* must be reasonably related to the efficient and well-ordered operation of the school. For example, a student who lets air out of a teacher's car tire at a shopping mall on the weekend could be answerable to school officials on Monday morning. Punishing students by *requiring more academic work* or *denying them the opportunity to participate in educational activities* subtly discredits the intrinsic value of learning as well as the subject matter involved. Avoid using subject matter and learning activities as a form of punishment.

Punishment for wrongful acts is an accepted practice in our nation's system of government. Students should be taught to understand and, if appropriate occasionally experience the effects of punishment. This begs the question, when should we punish students as opposed to using encouragement and positive reinforcement? I recommend commensurate and compatible consequences that begin with education and encouragement; proceed through counseling and conferences; and eventually move, as a last resort, to suspension and expulsion. The students' responses to each approach will help educators understand student goals and motives and provide the feedback needed to indicate success or an appropriate next step that must be taken. Be considerate and persistent as you slowly "tighten the screws."

Property Loss and Damage

Reasonable rules protecting public school property seem to be well accepted by students and are seldom disputed. If a problem occurs, it is usually due to lack of communication resulting from whether or not students have received *adequate notice* that their actions were damaging to school property. For example, students who are allowed to put their feet on chair seats at home may find nothing wrong with doing it at school, or woodshop students who have not been instructed otherwise might use chisels as screwdrivers because they have seen this done by one of their parents. Identifying and discussing foreseeable problem areas at the beginning of class will undoubtedly lessen the likelihood of student misunderstanding and embarrassment due to lack of information. If the student handbook

or the teacher's instructions are ambiguous, then the rules and directions need to be refined. Adequate notice and proper instruction are essential to a fair and reasonable school policy designed to protect property loss and damage.

Commensurate and compatible consequences for *damage to public property* should be consistent with and proportionate to the severity of the loss incurred and the students' feelings of remorse. *Public service*, for example, has traditionally been accepted by judges as an appropriate lesson and punishment for many criminal and civil offenders. Options educators might employ to help students learn respect for the property of others could be: scrubbing walls and floors, picking up litter around the school, helping with a community cleanup project, or helping younger children understand the value of protecting school and personal property. Equipment or books *stolen* or not returned could result in loss of privileges associated with the class or activity. For example, failing to return a football jersey at the end of the season would bar the offending student from participation in other extracurricular activities. In most states, parents can be held accountable by law for the intentional acts of their children and required to reimburse the school, up to a specified limit, for the damage caused by vandalism, for example. Students who have accumulated a *large debt* and refuse to pay could face an appearance in small claims court if the school chooses to pursue the matter.

The loss or damage of a *student's personal property* is always a matter of concern for public school officials. Students and parents should be informed that bringing personal items to school could result in their loss or damage, possibly due to the behavior of others. Both parent and student should know that every effort will be made to help students care for their belongings, but that schools do not have adequate supervisory staff to insure the safety of students' personal effects. A solution might be depositories in the office or each classroom designated for those who choose to bring personal items to school for class projects, show and tell, or for personal expression or enjoyment during free time. By cautioning students and parents about the problems of protecting their personal effects and providing safe places for their personal property, school authorities are balancing students' individual interests with a workable administrative practice.

Speech and Expression

The writing, interpretation, and enforcement of *dress and appearance* codes is often a source of perplexing and difficult management decisions. Control over students' clothing is attempted with a plethora of rules covering unacceptable appearance, including such attire as: short skirts; long skirts; shorts; short-shorts; hats; coats or jackets in class; knicker suits; jumpsuits; coveralls; frayed trousers or jeans; shirttails outside of the pants; tie-dyed clothing; tank tops; bare midriffs; plunging necklines; jewelry; and clothing with slogans, pictures, or emblems. Hairstyles, hair color, and facial hair may also be regulated. In addition to unacceptable dress, schools often mandate that students wear such attire as socks, shoes, shirts, and bras. The problem with using the "exhaustive list" approach is that rules must constantly be rewritten as fads and styles change. The student, for instance, who is suspended for wearing one white glove to school, *à la* Michael Jackson, might find gloves added to the updated list of disruptive dress. However, required dress and appearance for extracurricular activities, such as robes at graduation or costumes or uniforms for performing groups, are not protected and may be controlled through reasonable regulations.

Although students have some First Amendment rights of speech and expression in public schools, they do not enjoy those rights in their homes. One approach which could be used to regulate student dress and appearance is to shift the responsibility to those who have the legal *authority to make a decision* on this issue—the parents or legal guardians. If, for example, students appear to be deviating from their family norms, inform their parents or guardians and encourage them to handle the situation. If most student appearance matters are adequately enforced at home, school officials can devote their time and energy to those students whose dress and appearance seriously disrupt the educational process. Let's look at it from a practical point of view. How would you reason with the infuriated parent of a suspended student who was wearing the same type of clothing that led to the student's suspension? If student dress and appearance are statements of family values, it only makes sense to work cooperatively and rationally with parents and guardians on

issues of acceptable school appearance. Students who know school officials are working in conjunction with their parents or guardians are likely to be more circumspect in their actions and dress. Perhaps they feel a greater sense of personal accountability when faced with the consequences of what may happen at home as opposed to only suffering the punitive powers of school officials. For example, *public displays of affection* are often difficult to control, but knowledge that the home will become involved in cases of questionable behavior at school may cause students to think twice about the way they reveal their feelings in public.

Often, students feel uncomfortable or complain about the *actions or appearance of other students*. For example, students sitting next to someone with a pink and green punk hairstyle, multiple dangling earrings, and clothing to match should realize that the student's appearance may not only be acceptable at home but commensurate with the family's lifestyle. Educators should help discomforted students understand these actions from a constitutional perspective and, in turn, appreciate our nation's rich cultural diversity and the individual differences among families in today's society.

Other examples of student speech and expression that are protected in the public schools include a student's right not to participate in the *Pledge of Allegiance*. Although students enjoy the right to read about *ideas* contained in school books, they lose this right if the book is found to be *pervasively vulgar*. Students who bring their *own literature* to school or who *display pictures and posters* in their lockers should be given notice that these materials must meet the test of their family values as well as society's test of pervasive vulgarity.

Health and safety might be the compelling state interest which requires students to *wear shoes* in school or appropriate *protective gear* when participating in certain sports or activities. Encourage independent thinking and a vigorous exchange of students' ideas and expression by providing bulletin boards in prominent places throughout the school for *free-speech activities*. It is important for students to know they have a right to speak out on issues of public concern. By providing free-speech bulletin boards, school authorities are balancing student rights with their administrative responsibility and legal authority to control the time, place, and manner of student expression. Designated student bulletin boards would allow school officials to restrict daily announcements and other bulletin boards

solely to school-sponsored events and activities.

Insubordination and *open defiance* of a teacher's authority violates the law in most states and usually results in suspension or expulsion. Although removal from school is legal, commensurate and compatible consequences encourage a broader approach to the problem. Experienced educators have learned not to take the students' language or attitudes personally, but to perceive such behaviors as symptoms of other problems. Punishment or banishment is usually not considered to be the best first step with defiant students, and removal from the educational setting takes them away from educators, counselors, and administrators who are in a position to help. A physician, for example, continues to seek a cure for truculent patients who refuse to take their medicine and does not consider banishing them from the hospital as a viable alternative to proper treatment. Cooperative efforts with parents or guardians and other professionals, especially those enjoying good rapport with the student, should be played out before giving thought to removal from the educational setting. *Profane language* and *indecent gestures* are problems similar to those mentioned above and could be handled in the same manner. Although students have rights of free speech, this does not include offensively lewd and indecent speech and expression.

In the words of the *Tinker* decision: ". . . this sort of hazardous freedom . . . this kind of openness . . . that is the basis of our national strength . . . must be balanced with states' interests in providing an educational environment free from serious disruptions." Teachers and administrators should not act precipitously or without serious deliberation on issues of student speech and expression. Parent, guardian, and educator cooperation may be the most judicious course to follow in matters of student expression. Educators must help students learn the responsibility that goes with being themselves and the patience and understanding to accept others as themselves.

Smoking and Chewing Tobacco

Schools in states which do not allow persons under the age of eighteen to smoke must prohibit smoking on school premises. Schools without state legal constraints may choose to *ban smoking* based on two compelling state interest arguments: health and safety

and legitimate educational purpose. School officials can show that smoking is a proven health hazard and a fire safety problem affecting the smoker and others, and that a legitimate objective for an educational system is to maintain and inculcate habits designed to preserve good health among pupils.

Building administrators who choose to allow students to smoke at school argue that students are going to smoke somewhere. They feel it is better to get smoking out of restrooms, hallways, and away from other students by restricting smokers to a location which can be adequately supervised. An important consideration for administrators who choose to allow student smoking is to maintain the delicate balance between the appearance of advocating or condoning smoking and protecting the rights of students who choose to smoke. To achieve this balance, administrators usually provide a smoking area outside the building and, preferably, out of view of passersby. If the area is not too comfortable or attractive, it appears that the school is only accommodating students' individual differences but not sanctioning their behavior. Administrators receiving public complaints might try requiring parental or guardian permission for students to use the smoking area. Critical citizens could then be informed that the decision to smoke was made in the student's home and not as a result of school policy.

Students *chewing tobacco* are often less obtrusive and annoying to others around them than smokers are. Community customs and accepted lifestyles have always been an important consideration in workable school rules. In some regions of our country chewing tobacco is an accepted part of the community lifestyle and, like smoking, could be regulated by reasonable school rules. In other communities it may be considered disgusting and reprehensible and would be politically inadvisable as school policy. Schools choosing to ban smokeless tobacco could again cite reasons of health and the responsibility for teaching good health habits. Administrators seeking a balanced approach, however, could restrict chewing to the already assigned smoking areas and provide appropriate receptacles. An educational approach to chewing tobacco could be used by the school to inform students as to the health hazards of chewing tobacco and the when, where, and into what of expectorating. If done properly, spitting tobacco into a tissue is no more offensive than blowing one's nose in class. Finally, when an issue as volatile as chewing tobacco arises, let the home have the last word and require

parental or guardian permission for participating students. The central issue with smoking and chewing is not primarily one of student rights, but a pragmatic question of adequate supervision, workable enforcement, and community attitudes.

Search and Seizure

The Fourth Amendment of the United States Constitution forbids "unreasonable searches and seizures" by government officials and provides that warrants "describing the place to be searched, and the persons or things to be seized" can be issued only "upon probable cause." This amendment is applicable to school situations only when a state or federal criminal prosecution occurs based on evidence obtained from school premises and the involvement of school authorities. Additionally, the Fourth Amendment is sometimes mentioned in connection with the concept of the right of "an expectancy of privacy," which is also associated with the concept of liberty derived from the Fourteenth Amendment.

Occasionally, teachers and administrators have reason to search students who are suspected of hiding such things as books, school equipment, drugs, or even the personal property of other students. In most instances of this kind the teacher just wants to recover the school property, remove drugs from circulation, or return what was taken to the rightful owner. In the past, some teachers have taken it upon themselves to summarily empty pockets, open desks, or clear out lockers in order to locate missing items. This somewhat oppressive and heavy-handed approach has now given way to students' rights under the Fourth Amendment which requires teachers and administrators to search for and seize suspected contraband and prohibited items in a fair and reasonable manner.

This process for reasonable searches has been interpreted for public school educators in the 1985 United States Supreme Court case of *New Jersey* v. *T.L.O.* Justice Byron White, writing for the majority opinion, analyzed what is reasonable under the Fourth Amendment in a public school situation, and found that such a determination requires balancing "the individual's legitimate expectations of privacy and personal security" against "the government's need for effective methods to deal with the breaches of public order."

The majority of the Court determined that the warrant requirement was "unsuited to the school environment" and held "that school officials need not obtain a warrant before searching a student who is under their authority." The Court further stated that: "The legality of a search of a student should depend simply on the *reasonableness*, under all the circumstances of the search." Reasonableness involves a twofold inquiry: *first*, one must consider whether the action was justified at its inception; and, *second*, one must determine whether the search as actually conducted was reasonably related in scope to the circumstances which justified the initial interference. Although the Fourth Amendment states the government must have "probable cause" to search, the standard now applicable to public schools is *reasonable cause*, which requires considerably less evidence. By applying a lower standard for educators, the Supreme Court balanced the rights of students to a reasonable search with the custodial responsibility school officials have for the supervisory and educational demands of public education.

In applying these legal standards, the important question facing educators who must make such decisions on a daily basis is: "What evidence is relevant and necessary to determine reasonableness?" Justice White's opinion helped answer this question when he stated that: "Such evidence need not conclusively prove the ultimate fact in issue, but only have any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." To meet the first half of the twofold inquiry, the teachers must have at least some shred of evidence or reasonable suspicion that a student is hiding or has possession of something forbidden by school policy or state law before they can initiate a search. For example, to allow an administrator to open all the students' lockers just to "see what might turn up" would, of course, be without reasonable cause at its inception and thus be in violation of students' Fourth Amendment rights. However, if a student reported to a teacher that a package which looked like heroin was seen in another student's locker, this would provide the reasonable suspicion necessary at the inception to make a legal search, regardless of whether or not heroin was found.

The second part of the twofold inquiry relates to the scope of the search, or "Now that I have reasonable suspicion there may be heroin in a student's locker, how far can I take a legal search?" If heroin is not found in the locker, can a search of the student's pockets, purse,

car in the parking lot, or bedroom at home be carried out? *Scope* encompasses the reasonableness of the depth and breadth of the search which must be plausible and logical in accordance with the circumstances presented. Reasonable cause or suspicion at the inception and the scope of the search will both be weighed carefully when determining the legality of a public school search and seizure.

Random searches of students' lockers and desks are legal if a teacher can demonstrate a compelling state interest to conduct a blanket search. For example, at the end of each semester many school officials conduct searches to locate lost or misplaced school property and clean up such health hazards as spoiled food and spilled drinks. This type of search would clearly fall under the state's interest in maintaining its property. It is very important, however, to advise students that there will be periodic searches and notify them in advance when and for what reasons the searches will occur. This open and straightforward approach not only adds to the integrity of good administrative practice in the eyes of the students, but reduces student suspicions that administrators are "sneaking around behind them." Whenever possible *have students present* when conducting the search. If students are not present, administrators risk possible accusations of taking something else from a locker or desk, or just invading a student's privacy. When students cannot be present, ask another adult to witness the search and record what is seized. Although students may lose some of their rights of privacy, they do not give up their *right to notice*. If something is found to be missing during class, a random search of all students before they leave the room could be an infringement on their constitutional rights. However, if there is reasonable suspicion that a specific student is concealing someone else's property, searching that one student would be considered reasonable.

Health and safety are compelling state interests which permit a blanket search of all lockers in the event of a *bomb threat*. If something illegal is found in plain view during an emergency search, it would not be unreasonable for school authorities to seize it. In the case of a clear and present danger such as a bomb threat, we can all expect to lose our constitutional rights until the danger has subsided. In this situation, notice to the students would not be necessary because of the life-threatening nature of the problem. The blanket search ban has also been applied to *extracurricular activities*, such as searching the luggage of band members before they leave on a concert

tour. On the other hand, health and safety might be used as compelling state interests to require urinalysis of athletes if they choose to participate in athletics. Athletes high on drugs create a risk not only to themselves but to all the other participants. Except for emergencies, serious injuries, and periodic searches for school property, random searches of students or their lockers are not advised.

A frequent practice in education is the *seizure of students' property* that is prohibited by school rules. This may include seizing squirt guns, knives, or new "fads" that come along, which, when used in class, usually disrupt the educational process. Although these items may be banned from use on the school grounds, a teacher or administrator who confiscates property and does not return it within a reasonable period of time is similarly blameworthy by committing a "tortious taking of another's chattel." Innovative and creative ways to return students' property should be found, such as involving parents; coming in after school; or, in the case of weapons and drugs, law enforcement officers. Incidents involving the illegal possession of drugs, firearms, or contraband should be turned over to law enforcement authorities. Consider asking the law officers for a receipt for the items submitted to them. It could protect you from the embarrassment of being accused of keeping and using another's property for yourself. You might also consider giving receipts to students when you take their property. Providing a student with a receipt shows professionalism and that the incident is being taken seriously.

Students who *refuse a reasonable request* to relinquish something they are concealing must be handled with caution. Wrestling students to the floor in order to search pockets or purses may not only result in injury, but may even be construed later as unreasonable force. Teachers confronted with this situation should not attempt to physically search or seize property, but rely on the assistance of other professionals to conduct the search. In certain cases, the search should be handled by law enforcement personnel rather than an educator. In the event of a dangerous weapon or explosives, the law allows whatever reasonable physical force is necessary when there is imminent danger to students and faculty. As in other confrontations, the best approach to manage uncooperative students might be to bring in their parents or guardian or, in dangerous situations, rely on the expertise of law enforcement personnel.

The courts are more stringent in applying Fourth Amendment

protections to *searches of a student's person* than they are to lockers or desks. A personal search involves a greater interference with privacy. It is basically an individual's privacy which is protected by the Fourth Amendment. The volatile issue of *strip searches* was not decided in *New Jersey* v. *T.L.O.*, but it is likely that the Supreme Court would agree with the lower courts which have consistently upheld the unconstitutionality of strip searches. The reasonableness test for a school search questions whether the "measures adopted are intrusive in light of the age and sex of the student and the nature of the infraction," which can be interpreted as an implicit warning for school officials to use good judgment and refrain from strip searches of students.

Although educators are given wider latitude in student searches than are police, it is not a license to randomly search or capriciously invade the privacy of public school students. The courts have given us a very workable set of guidelines which can be easily adapted to the school setting and have proved effective in disciplinary matters. Teachers and administrators who understand and apply Fourth Amendment concepts judiciously should experience few complaints from students and parents. The *T.L.O.* case has provided very clear guidelines and all the authority necessary to successfully manage a safe and secure educational environment.

Press

The First Amendment freedom of the press clause was set forth to prohibit *prior restraint*. Simply stated, our government does not have the legal authority to mandate in advance what anyone may or may not publish. If a person's publication injures another, remedy is found in civil action for libel. Publishing material which advocates the violent overthrow of our government or which is obscene may result in a criminal prosecution. Civil and criminal actions both may supervene the publication, and wrongdoing will be decided on the merits of each situation. The freedom-of-the-press question that faces public school officials is whether prior restraint can legally be applied to student publications.

Students enjoy only some *substantive due process* rights in the area of student publications primarily due to the age and maturity of

the students, and the fact that they cannot be legally liable for what they publish. Their substantive rights allow for *some prior restraint*, but it must be reasonably imposed only in those special circumstances when the material is likely to cause substantial disruption of or material interference with school activities. Publication rules which prohibit obscenity; profanity; libel; ads for any product not permitted minors; political endorsements; the demeaning of any race, religion, sex, or ethnic group; or material which would cause a substantial disruption of the educational process would be examples of reasonable prior restraint for student publications.

Although students' substantive due process rights have been weakened, their *procedural due process rights* are closely guarded by our nation's courts. To restate briefly, the procedural due process rights of students are notice, a fair hearing, and an appeal. Applied to student press matters, *adequate notice* means the material not permitted in student publications must be stated in a manner that is clear, concise, and reasonably comprehensible by the students. A *fair hearing* means that in the event of a disagreement, the students' reasons for publication must be heard and considered before the decision is conclusive. Finally, the student has the *right to appeal* the publication advisor's decision as well as other decisions in the appellate process. Although the law allows reasonable prior restraint, courts show little patience with school authorities who waffle on procedural due process rights in matters of student publications.

Because freedom of the press is such a volatile and frequently litigated area of the law, many secondary schools create *publication advisory boards* for the purpose of promulgating guidelines and serving as an appeal body in the event of an appeal from the students. The board membership could include the student editor, the publications advisor, a student-body representative, a teacher, an administrator, a school board member, and possibly a local newspaper editor. Any appeal to this advisory board or school administrator should be heard without delay, preferably within forty-eight hours to avoid the pretext of administrative delaying tactics. The publication board only advises the building administrator, yet it offers an informed and politic buffer for many sensitive publication issues that must be promptly and fairly decided each year.

Publication guidelines should include standards of good journalism, emphasizing technical skills in writing and reporting; a statement encouraging students to express their opinions on relevant

issues; and a clear and concise list of prohibited subject matter. Students should understand that nothing stated in the guidelines is intended to censor any article or idea because it is controversial or criticizes a particular point of view. The objective of student publications is to teach the importance of a strong press in a democratic system and, through example, how an educational administration faculty and student body can accept and learn from a free and open exchange of ideas. For example, an editorial criticizing potholes in the parking lot or questioning the quality of school lunches should be judged on its fairness and accuracy as well as the quality of the investigative and reporting techniques. An open and above discourse on student reporting and opinion should be encouraged and viewed by the administration as an indicator of a healthy educational environment.

Time, place, and manner may be regulated for students who choose to distribute *off-campus publications* on school grounds. The rules must be reasonable and may include prior approval by school authorities. For example, a student who wants to distribute material on the evils of abortion has the right to pass these materials out at school, but not necessarily in a crowded hallway or during classes. As with a student bulletin board for free speech, administrators should assign places around the school that are appropriate for distributing publications. Students who object to the ideas being distributed by other students who are expressing their opinions could be encouraged to express their views in a similar manner. Another issue to consider is whether or not students exercise their right to publish and distribute information when they *pass notes* to one another in class, and would these rules stand the constitutional test of reasonable prior restraint? Perhaps by encouraging notes in class, teachers might abate some of the disruption now caused by whispering or "under-the-desk relays" and even improve the concentration of those students who feel an urgency to communicate.

There is a delicate balance between responsible student journalism and students' rights to publish their opinions that cannot be allowed to get out of control either through inappropriate publications or by poor administrative practices. Unreasonable or heavy-handed censorship of student publications quickly escalates and is often a feature news item in the local press. On occasion, an administrator's decision to censor is even held up to national ridicule. The

fourth estate hangs together very well and vigorously guards its freedom from prior restraint and thirsts to champion even the smallest of injustices. Administrators must make every effort to avoid confrontations with the press, any press. Make judicious decisions refined and informed by a representative publications committee, assign competent publication advisors, know the law, and use considerable prudence and caution in this very volatile area of student constitutional rights.

Religion

The First Amendment to the Constitution provides that "Congress shall make no law respecting an *establishment* of religion, or prohibiting the *free exercise* thereof." When applied to student rights, this double-edged sword forbids a public school to establish religion, and, at the same time, requires that it make every effort to accommodate the free exercise of students' religious practices and beliefs. As simple and manageable as this may appear at first glance, to maintain this sensitive and difficult balance between the students' right of free exercise and the school authorities' duty not to establish is one of the most difficult and politically volatile issues facing educators today.

It is essential for teachers and administrators to have a clear, workable, and legal perspective on religious discrimination. It begins with understanding the application of three tests the Court uses when litigating the constitutionality of school rules and decisions on religious matters. *First*, the statute must have a *secular legislative purpose*. The school rule or decision must have a legitimate educational purpose and not be a surreptitious attempt at, or have the effect of, circumventing the establishment clause. *Second*, its principal or primary effect must be one that *neither advances nor inhibits religion*. In other words, school officials must remain neutral and cannot celebrate or advocate a religious point of view, nor can they take a hostile attitude toward religion or impair its worth.

Third, the statute must not foster an *excessive government entanglement* with religion. There must be a real and ostensible separation between religion and the state. Entanglement matters usually involve state funding and decision-making authority. Rules, decisions, and activities must pass all three tests if they are to meet the constitutional

criterion of nondiscriminatory educational practices concerning religious freedom.

The most effective way to satisfy this tripartite test is to approach religion in public schools from an *educational perspective*. References or activities related to religion or religious teachings are constitutional if they are intended for a legitimate educational purpose. In 1963, Justice Tom Clark's opinion upheld this concept in *Murray v. Curlett*. He stated:

> . . . it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistent with the First Amendment.

As professional educators, it is our responsibility to teach about religion's rich and diverse history, traditions, and doctrines when we integrate these concepts into appropriate subject matter. As long as school personnel approach religion from an educational perspective, they will be considered responsible educators and their curricula will be perceived as having a secular legislative purpose.

However, if a school activity resembles a *religious celebration* or if an educator's remarks have the effect of *advocating religion* or having religious overtones, then clearly there is religious discrimination and violation of the establishment clause. The line that exists between legitimate educational purpose and religious celebration or advocacy is a fine one, often resting on the educator's intentions and the manner and mode of expression. For example, religious music performed at the winter concert may be presented in such a manner as to create the impression of a religious celebration, or it may be perceived by those in attendance as an entertaining evening of seasonal music representing students' educational achievements and ability to perform before an audience. Whether such a concert comprises a constitutional infringement in usually "in the eye of the beholder" and is based largely on the emphasis placed on staging, programming, styling, and the secular or religious intent of the director. Public school music teachers know they have achieved balance in their winter concert when Christians are overhead saying:

"What a good way to start the Christmas season," and non-Christians are talking to each other about how well the students performed, the variety of seasonal music in the program and the educational value of a good music program.

School prayer, which is common to assemblies and school activities, has the appearance of advancing religion through student worship and for that reason violates the establishment clause. As alternatives to opening invocations, many administrators have substituted meaningful prose or poetry for the ceremonial opening prayer. It seems incongruous to many students and parents that school prayer is unconstitutional while an opening prayer at the city council meeting is not. Prayer in the public sector is constitutional only if the prayer is used for a secular legislative purpose. Ceremony and tradition are the most common reasons for secularizing prayer at public functions and are upheld by courts as simply tolerable acknowledgments of beliefs widely held among the people of this country. These legal arguments have yet to be applied to elementary and secondary public schools because of the age, impressionability, and propensity of students to emulate teachers. Although school-sponsored prayer is religious discrimination, *a moment of silence* for a legitimate educational purpose could be legal. For example, many coaches provide a quiet time before a game for the team to relax or "psych" themselves into playing a good game. By having a secular purpose for silence and contemplation, coaches or others using this practice are neither advancing nor inhibiting students' religious practices or beliefs.

Voluntary student prayer and religious study groups meeting in the public school have also been held in many states to violate the constitutional rights of other students. Courts argue that by providing public facilities and, in some instances, supervision for religious activities before and after school hours, schools have the appearance of advancing religion. The Federal Equal Access Act, passed in 1984, allows high school students a limited open forum before and after classes, which could not exclude religious activities. This act only applies to school districts who choose to adopt it as policy. Administrators seeking more information about the law should contact their school attorney and study carefully the pros and cons of the law before deciding to adopt an open forum policy. *Students worshipping alone* fall within the intent of the free exercise clause and may be forbidden from practicing their religious beliefs only if school

authorities can demonstrate a compelling state interest. For example, students have the right to fold their hands, raise their arms, or kneel as they pray silently before eating lunch in the school cafeteria.

The free exercise clause of the First Amendment allows students, with parental permission, *not to participate* in classes or activities which are contrary to their religious beliefs. Although they may miss class, assigning other coursework or completing missed assignments can be expected and would serve to fulfill the school's legitimate educational purpose. Evolution is a volatile subject, and although students may be excused from learning it those who remain should still be taught that evolution is considered a scientific theory and not necessarily fact. Parent-approved *release time programs* for religious instruction off of school property for a reasonable period of time each week have been held as a student's right of religious practice under the free exercise clause. Allowing parochial school students to ride *public school transportation* does not violate the establishment clause because busing students to school does not advance religion, it only benefits the state's interest in the health and safety of children.

Students *wearing religious dress* are within their constitutional rights as they freely exercise their religious beliefs. On the other hand, teachers and administrators who wear religious dress or symbols or who talk to students about their religion, may appear to advocate such religious beliefs, thereby violating students' rights under the establishment clause. Students who choose *religious themes* for individual art subjects, woodshop projects, musical solos, composition topics, or term papers exercise their religious freedoms. Free time provided to students during class would permit them to read religious material brought from home. Students who *post notices* of religious meetings or express their religious beliefs could use the bulletin board space provided for student expression previously referred to in the section titled "Speech and Expression."

I am reminded of an anecdote told in my school law class by a Jewish woman whose daughter's fifth-grade class voted to make and sell Christmas tree ornaments to defray the costs of their class Christmas party. Not only were many class hours devoted to the project, but the students were told they could sell the ornaments only to family members to prevent soliciting sales from strangers. I still remember how the mother's voice trailed off as she concluded by

saying, "There really isn't a very big market in a Jewish family for Christmas tree ornaments."

Part of the pain in all aspects of discrimination is the lonely feeling of being "left out." The difference between participating in another's celebration and in a legitimate educational experience can be very subtle. To the one who feels outside and alone, it can mean the difference between enjoying and benefiting from school activities or being "turned off by the system." As with other discriminatory practices, religious discrimination can be the source of disciplinary or learning problems if not handled properly.

Discriminatory Rules and Practices

The Fourteenth Amendment, from which all discrimination laws emanate, states in part: ". . . nor deny to any person within its jurisdiction the *equal protection of the laws*." From this brief constitutional clause, federal and state lawmakers have enacted enabling legislation which protects students from discrimination based on race, national origin, religion, sex, age, handicap, and marital status. In addition, federal and state agencies have promulgated a multitude of administrative rules which govern discriminatory practices. This section is not a review of these laws, but a commentary on their application to and their effect on classroom discipline. Educators responsible for areas of specific legislative intent, e.g., handicapped students under P.L. 94-142, must keep current and knowledgeable about the laws governing their specialty. However, classroom teachers and administrators are often unaware of and insensitive to ethnic, cultural, status, and other unique differences among public school students which result in unequal treatment. When we have taught students those qualities of character that make a diverse nation possible, we have met our professional responsibilities as educators as well as the demands of equity in a culturally diverse society.

Educators who seldom stereotype or label others appear to understand and value the background, culture, and unique differences among students in their classrooms. Such viewpoints embody qualities which enable them to:

- Expect the same academic achievement and standards of personal conduct from all students regardless of their ethnic group or cultural tradition.
- Avoid comparing or ranking groups with respect to classroom behavior, attitudes, and accomplishments.
- Avoid the use of descriptive terms, stereotypic phrases, or participation in humor that is derogatory or demeaning to any group of people.
- Promptly admit errors in judgment, sincerely apologize, and be willing to learn new perspectives.
- Integrate classroom displays, assignments, and lectures with different kinds of people in different roles.
- Make seat assignments, work assignments, line assignments, or playgroup assignments without regard to race, sex, age, national origin, handicap, spoken language, marital status, or religion.
- Maintain eye contact with, smile at, stand near, and enjoy all students.

Teachers and administrators who fully comprehend the concepts of liberty and equality encounter fewer disciplinary problems related to discriminatory practices. Students who are accepted and understood by those in authority will have second thoughts about skipping classes or disrupting the educational environment. The belligerent and obstinate attitudes of the lonely, defiant student who feels misunderstood and left out will be tempered by open-minded and genuine educators willing to learn about individual differences among their students. Educators spend too much time talking and interacting with people to deceive their students and be someone they are not. Few people study teachers and administrators more or know their biases better than their students. Students are keenly aware that the words educators use are only symbols representing to others what they want them to believe. Words that say one thing and gestures and actions another are often the antecedents of "at-risk" students. Judicious discipline requires a commitment through effort and action to assure all students an equal educational opportunity.

Health and Safety

One of the important functions of government is the protection of its citizens. This duty is even more important when government, through its public school personnel, is entrusted with a custodial responsibility for minors. The significance of the matter occasionally surfaces in a lawsuit against the school district, holding those in authority responsible for their negligent acts. While some students may occasionally complain about wearing safety glasses, not being allowed to run in the hallway, or being required to see the school nurse, most recognize the purpose of these rules and, with appropriate reminders, acquiesce. Health and safety policies which are consistently enforced not only protect the students from injury at school but serve to teach good personal habits and redeeming social qualities intended to benefit them the rest of their lives. Periodic and systematic searches must be conducted by school officials to identify hidden dangers which, if left unattended, could result in an injury. In order to be workable and effective, however, rules governing students' health and safety should be:

1. *Well Planned*—Consider what a reasonably prudent teacher or administrator would have foreseen under the same or similar circumstances, develop a plan to prevent those foreseeable problems, and follow through with its implementation.
2. *Highly Visible*—Use posters, warning signs, verbal reminders, adequate supervision, and other similar measures to insure adequate notice and control over anticipated problem areas.
3. *Fully Understood*—Use instructional handouts, verbal explanations, notification to parents, tests, demonstrations of students' abilities, and other communication efforts to teach students the proper health and safety rules and the procedures appropriate for the educational activity.
4. *Strictly Enforced*—Use proper supervision, be consistent, and "don't even let the principal enter the shop area without safety glasses."

Rules pertaining to fighting, drugs, treatment of injuries, walking

in halls, staying away from "attractive nuisances," jumping off swings, dispensing prescription medication, controlling infectious diseases, mandatory use of safety devices, physical examinations, and allowing only one student on each end of the teeter-totter are but a few examples of the many ways this compelling state interest is applied in the day-by-day management of a school. As a general rule, there should be a direct relationship between the likelihood of injury and the effort devoted to health and safety precautions. For example, a shop teacher who teaches and uses power equipment must devote considerably more instructional time to safety than a regular classroom teacher. If there is a serious threat of injury, the educator should:

1. Provide a handout which details the hazards involved as well as instructions to prevent possible injuries.
2. Discuss, demonstrate, and respond to questions until the written material is understood.
3. Allow students an opportunity to participate and demonstrate their understanding under proper supervision.
4. Make sure all absent students receive the same information and opportunity to participate.
5. Keep accurate records of those who have achieved understanding.

Field trips create the need for even more rules for proper supervision. Planning for activities off of the school grounds should take into account the hazards at the site, risks involved in transporting students, the age and maturity of participating students, and students with foreseeable problems. Parental notification is essential, not only for legal reasons but also to inform parents about the students' whereabouts and the educational purpose of the activity. *Students who drive* their own cars for school purposes or to school activities may be required to follow reasonable safety rules. A valid driver's license, adequate insurance coverage, a good driving record, and parental permission are examples of reasonable school requirements for those who choose to drive. There are few constitutional protections for students who choose to participate in *extracurricular activities*. Due to the nature of these programs, health and safety is the compelling state interest many coaches and activity advisors use to promulgate and enforce rules on matters of curfews, alcohol, drugs,

and other personal behaviors related to the health and safety of students and other participants.

Teachers and administrators cannot afford to compromise students' health and safety. Looming in the background is always the threat of a time-consuming and thorny lawsuit as the result of negligent health and safety precautions. Good management practice today would include forming risk management teams, consulting health officials, staying abreast of pertinent literature in the field, attending professional meetings, and seeking competent legal advice. Anticipate and plan ways to handle foreseeable dangers, carry through with proper supervision and instructions, and be consistent with enforcement. If the rule or decision is well thought out and supported by sound professional advice, hold firm and do not waiver in matters pertaining to student health and safety.

School Fees

Common practice has been that public schools require students to provide many of their own supplies, materials, and equipment before being admitted to school each fall. The published list of necessities ranges from items such as a four-color paint box for elementary students to a specified uniform for secondary physical education classes. However, many of these policies changed in the 1970s when state courts nationally interpreted their state constitutions to provide for a free public school system. Many state legislatures followed up by passing laws which specified in detail what could and could not be charged to students or parents by the public schools. There has been no consistency among these state laws. Some states distinguished between fees for required and elective courses, and others used curricular or extracurricular classes or activities as a criterion for exceptions. Due to this wide diversity, individual state laws now control and dictate the rules each school must follow.

Although individual state law governs, there exists, nonetheless, a common thread of discriminatory economic practices against disadvantaged students and their families which weaves its way through all these state laws. Reasonable rules and decisions sensitive to this issue would be in keeping with the letter as well as the spirit of the applicable laws. Some suggested guidelines are as follows:

- Avoid rules which require students or their parents to provide any money, materials, or equipment necessary to meet the basic needs of any required class or activity. This would not necessarily rule out discreetly allowing parents an opportunity to provide recommended school supplies and materials if they so choose. The difference may be that of elementary students coloring with their own paper-encased crayons while others use those paperless, speckled ones borrowed from a teacher's cardboard box of school supplies. The effect, however, is that all have crayons and are learning to color.
- School property which becomes the personal property of the student would require reasonable reimbursement to the school for materials and supplies used in the product. A bird feeder made in woodshop or a garment made in home economics are common examples of publicly financed materials often becoming students' property.
- Schools may charge for items for personal use or products which a student chooses to purchase, such as student body cards, student publications, class rings, annuals, and graduation announcements. School concerts, plays, field trips, and other activities considered to be optional or outside the district's regular school program may require admission fees.
- A reasonable rental fee may be charged for the use of school-owned equipment and a refundable security deposit may be required for textbooks and other materials. An exception might be made for an indigent family identified by participation in the federal school lunch program.

Extracurricular activities often become the focus of discriminatory practices in many schools. To an aspiring cheerleader or football player, the anticipated expense of shoes alone could be a deterrent if students feel their families cannot afford the investment. In order to offset student concerns, many advisors and coaches organize money-making activities to defray individual student costs and, in some instances, pay for those who cannot do so. These efforts, while certainly within the spirit of equal educational opportunity, must be handled with discretion and a sensitivity to those who would feel

patronized by the rest of the group. While it is good educational practice to provide an opportunity for our students to participate in well-planned learning activities and projects, the school activity should not become an end in itself nor a barrier to an economically disadvantaged student who cannot afford its price.

School Records

There are rules and regulations governing student records which must be recognized and put into effect pursuant to the laws of each state. Although state laws vary widely, the Family Educational Rights and Privacy Act of 1974 provides some congruity and well-defined guidelines which set forth the rights of students and their parents with respect to rules and regulations for educational records in all our nation's schools. In essence, the Act stipulates four major requirements of educational agencies and institutions.

1. They may not have policies which effectively deny parents or eligible students (18 years or older) an opportunity to review and inspect education records.
2. They may not have policies or practices which would deny parents or eligible students an opportunity to challenge content of education records believed to be inaccurate, misleading, or in violation of the students' rights to privacy.
3. They may not have policies or practices which would permit access to or disclosure of information without consent, unless specifically permitted by the Act.
4. They must notify parents and eligible students of their rights under the Act.

The foreboding shadow of interested parents presents another dimension to the maintenance of school disciplinary records, oft-times opinion-laden and misleading, that heretofore had been available only to professional educators. Because these records are now open to view by parents, guardians, and other noneducators, it is even more important that documentation about students is in fact true, accurate, and free from editorial comment.

Avoid the use of labels. Labels often obscure and confuse the intended communication and lead to a misunderstanding which in

turn could easily infringe on student liberties. Replace labels with statements from firsthand experience that describe, detail, narrate, illustrate, or characterize student attitudes and behaviors. For example, a statement that "Bob has sticky fingers" could have more than one meaning. But statements such as "Bob comes to class with sticky fingers on the days the school serves cinnamon rolls for lunch," or "I have caught Bob, on several occasions, stealing personal items from students' desks" are descriptive statements that portray vastly different attitudes and personal behaviors. Although "sticky fingers" is a label commonly applied to both those who steal and those whose fingers are covered with sticky food, the difference between a thief and a messy eater is considerable.

"Susie is lazy." Does this mean she often sleeps in class, does not hand in work on time, is habitually tardy, daydreams, shows lack of interest, does not assume responsibility, or has a learning disability not yet diagnosed? By thinking in terms of describing firsthand experiences and allowing others the opportunity to label, educators will not only provide more useful information, but politically and legally stand on much safer ground. If Susie alleges some day that the "lazy" label was a detriment to getting a job or college scholarship, teachers and administrators will find it far easier to prove a history of late arrivals for class than to try to remember and provide enough examples of her behavior to convince parents or a court that she was correctly diagnosed and accurately typed as being "lazy."

Avoid rules which *withhold report cards* from students until a fine is paid, a book found, or a uniform returned. The Privacy Act allows parents access to all records which would include the educational information on report cards. If the parent or guardian has access to a student's record, they are entitled, for a reasonable fee, to a copy of it. Include *progress data only* on report cards going home with students and restrict behavioral and attitudinal information to parent-teacher conferences. How many ways, for example, could a "U" in citizenship be interpreted by parents whose only source of information was their child's account of the particulars? *Personal contact* with parents or guardians allows for germane responses to good faith questions and an opportunity for proper elaboration of facts essential to successful communication between the school and the home. *Behavorial information* should be shared with parents or guardians only in the presence of someone qualified to interpret such behavior. Although it is difficult to contact busy or disinterested parents, every effort

should be made to speak directly with those concerned about student behavior.

Student records are statements made by professional educators. Avoid unprofessional language and ambiguous or vague statements of student achievement and behavior. Describe in objective terms student behavior and leave labeling to those reading the record. Hanging in the balance are the liberty interests of the students' future opportunities.

Parental and Guardian Rights

The question of who decides children's education is balanced between the parents' or guardians' individual rights to raise their children according to their own way of life and the state's compelling interest in shaping an enlightened society capable of self-sufficiency and good citizenship. As a general rule, parents have a right to make a reasonable selection for their children from among the subjects offered by the school district. When parents disagree with a school's *curriculum requirements*, local authorities must excuse students from part or all of the course in question unless there is shown to be a compelling state interest. For parents who become disillusioned or at odds with public school rules or curriculum requirements, there is always the option of private schools or home teaching. It is therefore prudent administration to consider carefully good-faith requests for exceptions to required courses and activities.

Many parents and guardians today are requesting a review of school activities and curriculum materials which may conflict with their family values. The activities include areas such as values clarification, evolution, sex and death education, drugs, globalism, and psychological and attitudinal testing. Cited as the legal basis for these requests is the Hatch Amendment of 1978, which allows parents to inspect all instructional materials designed to explore "new and unproven" teaching techniques. The Amendment, however, applies only to programs which are funded through the U.S. Department of Education and not to programs funded through other federal agencies or state or local sources. Although this federal law affects only a small part of a school's curriculum, the spirit of openness and reasonable exceptions to this law provide an opportunity for educators to

encourage parental participation in the education of their children. Whether the reason is religious, ethnic, moral, or simply that, "We want our children to learn it our way," appropriate educational and astute political decisions must be carefully weighed. Both old and modern courts recognize limits to the power of parents to idiosyncratically determine what their children will study in school. This is especially true where religious claims are tenuous, where secular reasons are weak, or where the parents or children pressure others to follow their lead in trying to get excused from coursework. Except for these limits, parents enjoy strong and consistent legal support to decide what and how their children learn in public schools today.

Every opportunity should be made to involve parents and guardians in matters of curriculum and discipline. By encouraging parents and guardians to take an active role in decisions which impact their family values, educational and disciplinary problems with students are significantly lessened. School rules and decisions not supported by parents or guardians have little effect on students who feel they have license from home to disrupt in ways which coincide with their family values. Not only are teachers directing time away from academics in favor of the disruptive student, but additional time and effort is spent on unnecessary parent conferences. In the final analysis, the balance between family customs and beliefs, and society's need for an educational climate conducive to learning demands careful listening, clear and thoughtful responses, and judicious decisions.

Confidentiality

If there is a vital organ in the body of our Constitution, it is the individual's expectation of privacy from governmental action. There is federal legislation, such as the Family Educational Rights and Privacy Act previously discussed in "School Records," and separate state legislation which provide specific guidelines concerning the confidentiality of student records and conversations between students and certificated staff. Administrators, counselors, special educators, and teachers employed in fields directly impacted by the rules and regulations governing confidentiality must be knowledgeable of the

applicable federal and state laws. Where these laws do not apply, the principles of professional ethics prevail. Although ethics do not represent the letter of the law, this sense of responsibility and conscience reflects the spirit of our Constitution. The following recommendations have their basis in these fundamental principles:

- Consider all conversations with students, faculty, and parents to be confidential from others except those who have a demonstrated professional need to know or if the information involves a serious question of health and safety, e.g., suicide, weapons.
- Take steps to insure that students' academic achievement is not viewed or known by others, e.g., code posted grades, use inside or back pages for grades and comments on papers being returned, refrain from verbal comments when returning students' work in class.
- Avoid comments and visible reactions relating to student behavior in the presence of others. Private conferences demonstrate a concern for student self-esteem and avoid public confrontations.
- Refrain from comparing students, especially siblings, in the presence of students or parents. Otherwise, educators jeopardize students' academic interests and exacerbate behavioral problems.
- Discourage disclosures by others which are irrelevant and inappropriate, information that concerns the private life of others, or confidential data, e.g., during show and tell, gossip, parent conferences.
- Before touching a student, give thought to possible ramifications, e.g., abused children, sexual implications, rights to privacy, tort liability.

Student discipline and or academic problems are often directly related to a teacher or administrator *disclosing information* which, in retrospect, should have been communicated privately or not at all. For example, avoid telling a student in front of a music class, "You can't carry a tune in a bucket." This is hardly the time, place, or manner to diagnose a singing problem. Often flippant remarks or sarcastic comments are uttered spontaneously in an effort to be clever or entertaining. Taunting and teasing from other students stemming from an educator's single careless remark or gesture can have a lasting and often harsh effect on a student's self-concept and

initiative toward good citizenship.

Teachers and administrators must exercise prudent judgment when revealing certain intimate aspects of their *private lives* and when expressing inappropriate *personal opinions* to students and others within the context of the school environment. For example, whether or not a teacher has ever experimented with marijuana or recommends experimenting with it should be kept personal. This is information and an opinion that should not be made known to students. Educators serve as role models and risk loss of respect, added discipline problems, and, in some cases, their jobs as the result of disclosing inappropriate information about their private lives that unduly influences the impressionable minds of their students.

Occasionally, information disclosed in a confidential relationship reveals suspected *child abuse*. Abuse is defined by the laws of each state and generally includes neglect, sexual molestation, physical injury, and, in most states, psychological ability to function. The law requires school personnel to report any suspected child abuse, despite the fact it was a confidential communication, to a law enforcement agency or the government agency with the legal authority to investigate and decide on the matter. An abused child is often the result of irrational behavior within the family unit, and caution must be used to insure that the focus of the abuse does not shift to the educator blamed by the abuser for initiating the investigation. Although the law protects the anonymity of the person reporting, good administrative practice would include developing a building guideline for reporting suspected child abuse and establishing an effective working relationship with the investigative agency.

Suicide and other life-threatening disclosures are examples of confidential communications which must be reported to qualified school authorities. Many student problems are simply beyond the expertise of educators who are made privy to critical situations. In these cases, one-on-one counseling should be avoided and the problem directed to those professionals whose duty and professional training enables them to work with the troubled student. Although a student may solicit a promise not to tell, in life and death matters or situations that are dangerous to others, the confidential relationship must be abandoned in favor of a professional team approach.

Teachers and administrators sometimes hear students confess to past or present *criminal activity*, such as possessing or selling drugs, assault, stealing, extortion, and other similar illegal acts. In the case of secondhand knowledge of alleged criminal activity, the teacher is not legally held to voluntarily disclose the information to law enforcement officials. Educators could be legally implicated as accessories if they act or participate in some way after knowing about the crime. Depending on state laws, school personnel may have to disclose a confidential statement of criminal activity if subpoenaed to testify. A teacher who suggests an old warehouse as a good hiding place for contraband stolen by a student is an example of an educator who would be considered an accessory to a crime.

Advising students about abortion, use of contraceptives, conflicts with family values, and other similar lifestyle decisions should be avoided. Helping students clarify values is a sensitive matter in most communities and precaution must be taken not to become directly involved. Adverse parental reactions, legal ramifications, and students holding the adviser blameworthy are possible negative outcomes of imprudent student advising.

Students who demand confidentiality as a condition for relating a personal problem are asking educators to agree to compromise their own personal and professional values. Although there may appear to be a fine line between the law and comforting a disillusioned student, educators must be able to recognize the difference and stay within the legal limits set forth. Teachers and administrators must be candid with students who seek their help in difficult situations that require educators to choose between their responsibility to society and their interest in the personal welfare of their students. Emotional involvement is sometimes difficult to avoid, but every effort should be made to maintain a professional relationship. Convince yourself that you are not the only one who can solve students' personal crises and solicit the help of the best professionals available. In some cases an educator might walk with the students to the counselor's office and introduce them to someone who can help. The personal problems of students are frequently volatile and fraught with unforeseen repercussions. Under very few circumstances would you want to "go it alone."

Although the confidential relationship between student and educator is not commonly associated with student discipline, unprofessional disclosures often precipitate an attitude of mistrust or resent-

ment. On the other hand, educators who show a respect for students' feelings of self-worth and their right to an expectancy of privacy provide the basis of a good learning environment and teach the principles of democratic living. Good classroom discipline begins and flourishes when there is a continuing relationship of openness and trust between an educator and student. Only through informed, sensitive, and judicious professional practice will this relationship endure.

Complaint Procedures

Casting its shadow over every public rule and decision is the Fourteenth Amendment right of substantive and procedural due process. Whether or not these rights are stated or written, they are implicit in every public function. How many handbooks, for example, covering student rights and responsibilities enumerate the students' process for appeal concluding with the United States Supreme Court? Frequently the rationale of the administrator is to accord complaint procedures a low profile in the hope that students will be less likely to complain if they remain uninformed. School officials, however, will realize that encouraging students to voice opinions and grievances through an accessible and open forum greatly reduces students' and parents' feelings of frustration, which are often a cause of learning and discipline problems. For many students and their families, just knowing their opinion will be considered or their grievance heard gives them a positive feeling about school and assures them that the school has placed a high value on student constitutional rights.

The *published complaint procedure* must be specific about who decides what, how it will be determined, and when it will be resolved. For example, if classroom rules and decisions are discussed first with the classrooom teacher, and if a satisfactory resolution is not reached, then the appeal process must clearly state the title of the teachers' immediate supervisor and the actionable time frames involved. A similar notice of procedure must be extended through to the local board of education. The school board is the legal entity in every district with final authority for all administrative rules and decisions. If an appeal is denied by the school board, the students may appeal to either a federal or state trial court, then to an appellate

court, and finally, if the justices decide to hear the case, to the United States Supreme Court. It is important to remember that the complaint process is a viable one and works best if each step is played out properly and none are bypassed. For example, if a parent complains about a teacher to a member of the school board, the board member should refuse to comment on the dissatisfaction and courteously refer the parent to the teacher's supervisor. Undermining the authority of subordinates can deaden team spirit as well as diminish student respect for the capabilities of their educators.

The *decision on an appeal* must be adjudicated within a reasonable time period and communicated directly to the parties involved. If possible, speak personally with the student and parents or guardians. Be open about the decision and responsive to valid questions. A conference is good educational practice and has proven to be an effective way to share opinions on sensitive issues. *Academic and behavioral decisions* which affect students' liberties and property interests should be left to the wisdom and discretion of professional educators. Student courts or even students who serve on faculty committees which hear appeals often create more problems than the benefits gained from students' opinions. Concern about confidentiality, students judging the private lifestyles of students and their families, and peer pressure to gossip or be swayed are only a few of the uncertainties involved. Although student input in the formulation of rules is educationally sound, decisions made to interpret rules and behavior require the more seasoned, well-informed approach of professional educators.

A balance must be maintained between the students' rights to adequate notice, a fair hearing and appeal, and the public's need for the orderly and efficient operation of its public schools. Time used to implement these procedures distracts from other educational responsibilities, but the rewards gained for teaching and providing for students' due process rights are endless for the students, their families, and our nation's system of government. It is my sincere hope that *Judicious Discipline* may be a moving force persuasive enough to give an impetus to all three.

Part IV

Part IV

Ethics: Beyond the Balance

ETHICAL practices manifest the conscience of a profession and constitute the acceptable standards of moral and proper professional conduct believed to be important by the profession and the general public. Often professional ethics are referred to as "beginning where the law stops." For example, there is no law against a teacher asking a student in the presence of classmates, "Why can't you be as good a student as your sister was in this class?" But the comparison of siblings either publicly or privately is considered poor educational and ethical practice, often precipitating behavior problems which could affect that student as well as the learning climate of the entire classroom. The community esteem of every profession lies in its ethical practices and conduct, and this is no less true for educators who are responsible for student discipline. It is the professional responsibility of educators to examine their own conscience and formulate well-defined standards of ethical practice for their classrooms and schools.

The ethics of classroom discipline have their origins in teachers' attitudes toward young people and how they view themselves as educators. If teachers believe proper discipline may be learned in the classroom and or school environment and that education is the vehicle through which young people can learn and develop attitudes of responsibility, then their professional ethics are student-centered. Conversely, teacher-centered educators who view classroom discipline as a necessary accommodation for their teaching comfort,

would define ethics in disciplinary matters as student behavior which would allow them their right to teach. Or, stated another way, teacher-centered educators feel their role is not to "babysit" but to teach their subject matter, while student-centered educators view student contact time as an opportunity to play a major part in the growth and development of young people.

A teacher's right to teach should be only incidental to the student's right to learn. The *right* to teach may be defined as having met state certification requirements—just as an *opportunity* to teach would imply having a teaching position. But a certified and employed teacher has the *professional responsibility* to provide equal educational opportunity to all students regardless of attitudes, abilities, and backgrounds. Public education does not have the *right* to decide who will be educated any more than the medical profession decides who will be treated or the legal community determines who will be afforded legal counsel. *Students have the right* to a public education and public school *teachers and administrators have an ethical responsibility* to help students learn and cooperate properly in an educational environment.

Positive Ethical Practices

An educator who interacts positively with students and uses a "take charge" approach is more likely to be effective in maintaining discipline than a teacher who operates from a defensive position. To acquire and maintain a positive approach to discipline is not always easy and often takes years of teaching experience to fully achieve. To state it metaphorically, "having your cake and eating it too" requires the ingredients of educational psychology and school law, mixed and stirred judiciously with firsthand experience, and baked at a public school setting until it rises to the occasion.

Although I alluded to ethical principles many times throughout the preceding pages, the following are some principles I have found helpful in providing a focus for energies and priorities in matters relating to student discipline.

1. *Model responsible personal and professional behavior.* Avoid shouting at a student to "stop being so noisy," or lecturing from a messy desk about the importance of being neat. Hypocrisy and insincerity combine to undermine integrity and have a negative effect on developing personal and professionl relationships.

2. *Develop fair and reasonable classroom rules and expectations which are supported by judicious and consistent decisions.* Management by whim and caprice can lead to embarrassment, alienation, and discipline problems. Educators who seek to understand individual differences among students and thoughtfully balance these differences with the rights of the majority will enjoy a positive relationship with students and their families. Academic and behavioral questions must be framed in terms of "What actions are in the best interest of the student?"

3. *Encourage and promote a commitment to learning and teaching.* Just "going through the motions" is usually reflected in student achievement and behavior. The enthusiasm of educators who are fired up about their subject matter and interested in helping others learn is infectious. This often makes the difference to a student who decides not to drop out, or guides someone on to a career previously thought to be out of reach.

4. *Focus efforts on motivation, encouragement, and building a positive student self-concept.* Statements such as: "I knew you couldn't do it" nave no place in an educational environment. The student of an educator who has mastered the art of these important educational tools and applies them first before moving on to less positive, perhaps ego-shattering, methods of discipline is fortunate indeed.

5. *Accept and appreciate the reality that students behave in a manner they believe,* for whatever personal reasons, *is in their best interests.* For better or worse, students come to our classrooms complete and sincere in their perceptions and beliefs. "I can't help you if you're not going to try" is similar to physician refusing to treat

patients who refuses to take their medication. The helping professions base their ethical practices on bettering those they serve regardless of their attitudes, behaviors, or the severity of their problems.

6. *Enjoy teaching and administration and be proud that you are first and foremost a professional educator.* Have confidence that your skills and abilities will make a difference in the attitudes and effort of any student assigned to your classroom. Light up your classroom or office and know in your heart you are a better educator and that students believe in themselves. A positive and professional attitude is invaluable when dealing with learning and behavioral problems.

Disciplinary Practices to Avoid

There are many good ideas that work and are effective in maintaining classroom discipline. Sadly, sometimes it is easier for educators to focus on those disciplinary practices that are *usually not successful.* Some educational practices have an immediate harmful effect, negating months and sometimes years of positive reinforcement. Remembering just a few practices to avoid, allows educators to be spontaneous and creative as they seek the numberless strategies and techniques of student discipline that are successful. For this reason, I recommend teachers and administrators compose their own list of techniques and methods to be used as a reminder of previous mistakes as well as an opportunity to add other examples of classroom incidents which have proven to be more damaging than helpful.

To begin this activity, I respectfully submit my list of "nevers" that I have gleaned during my classroom career. Like most of life's lessons we learn well, I still wear the scars as a reminder that I learned most of these the hard way. Please consider the following as you begin your list.

1. *Never demean a student,* especially in the presence of the class. Sarcasm meant to be clever or "a good chewing out" appears at first glance to have a place in classroom discipline because most of us experienced this approach to teaching responsibility and controlling

behavior from well-meaning parents or guardians. I found that not only did I destroy both a professional and personal relationship, but, no matter how often or hard I tried, I could never fully regain the student's respect.

2. *Never send students out of your classroom*, accompany them to the hallway or down to the office. The message you send to the class is a professional one of concern and willingness to work with the problem rather than sending the problem on to someone else.

3. *Never compare students*, especially siblings, except to another professional who has the need to know. I did not do this more than once and will never forget the way the student looked at me just before turning his eyes away. Students want to be judged on their own merits and not be thrust by their teachers or administrators into the shadows of others.

4. *Never demand respect*, earn it. Respect, not unlike love, implies the feeling of another which cannot be taken, only accorded to another who merits it.

5. *Never be dishonest with students*. A teacher who is open and authentic earns the trust and respect that is necessary for good classroom management.

6. *Never accuse a student of not trying* or ask a student to try harder, help them try again or suggest another way to accomplish the task. Accept the student's effort as genuine and offer further help. Teachers must communicate a message of faith in the student's ability to learn as well as an offer of partnership in the process. This may appear to be a subtle difference, but the student's reaction will be one of renewed effort and interest.

7. *Never get into power struggles with students*. Sometimes power struggles are difficult to avoid but with common sense and patience we can become quite adroit at averting them. If you sense a power play is developing with a student, begin by taking your sail out of their wind and anchor your boat with a long tether. These are no-win situations and should be handled privately at a later time through individual discussions and mutual agreements.

8. *Never flaunt the fact you are the teacher* and they are the students. This decision was made when you were hired and does not have to be brandished about at the first sign of conflict or with the often used "I told you so." If students feel you are sincerely making every effort to help them learn, they will try very hard to help you succeed as a teacher.

9. *Never become defensive.* Do not let your pride get out of hand and diminish your personal and professional qualities in the eyes of your students. I found that if I was wrong, acknowledged my error, and sincerely apologized, I was considered an upfront teacher with human frailties and suffered no loss of personal or professional respectability.

10. *Never use fear and intimidation* to control students. Fear may work in the short run, but the long-range effects are unpredictable and ineffective. Bitter feelings and sullen attitudes develop and many students become very inventive in the circuitous ways they seek revenge on those who choose this approach to discipline.

11. *Never punish the group* for the misbehavior of one of its members. More often than not the culprit enjoys the group activity and the innocent students resent you for punishing them. Retreat as gracefully as you can if you put yourself in this box, and find another way to handle the situation next time.

12. *Never act too quickly* in a disciplinary matter. By tightening the screws slowly, errors can be easily corrected and the possibility that you and/or the student can save face may just be the factor that turns the tide. Unless you have had good results in the past or you are certain that what you are doing is appropriate, patience can be a great ally.

13. *Never lose control of your feelings.* Remarks made during the height of emotional anxiety can cause both frustration on the student's part and regret on the teacher's part. Take a deep breath, be silent for a moment, and calmly formulate a solution that is devoid of emotional overtones.

14. *Never underestimate the importance of professional style and demeanor.* A psychiatrist, for example,

telling patients they are crazy is like a teacher calling students dumb. Bedside manner in every profession is important and educators must develop empathy for students' feelings. Maintaining a professional attitude and appearance in the classroom negates many potential problems and pitfalls which insensitive remarks can cause.

15. *Never think being consistent means treating all students alike.* Consistency in education is being able to identify individual differences among students day after day and provide the professional specialization and skills needed to help all students achieve success. Students realize they have different needs and goals and highly regard the teacher who understands that the same method of discipline should not be applied to every student. Take the time required to know your students and learn to appreciate and judiciously manage their individual differences. This will benefit both student and teacher.

Posting Ethics for Discipline

Now that you have compiled your list, draft a document to post in your classroom or office outlining the ethical basis which supports your style of classroom management. Post it beside your classroom and building rules. Not only will students and parents have notice of your rules, but they will also know something about your disciplinary style. Allow room at the bottom of your list of ethical behaviors for additions which you may append throughout the school year. This open-ended document illustrates the fact that experience is a good teacher and communicates to others that you are open and responsive to learning new behaviors. Spend class time discussing your ethical base and philosophy of discipline. Allow students an opportunity to react or give input. In addition to setting the tone for your disciplinary style, students can learn the ofttimes subtle distinction between law and ethics.

As students learn more about ethics and understand their importance in our society, suggest they compose their own "Ethics of

Student Behavior." Have them prepare a list of behavioral goals and principles to guide them in matters requiring disciplinary action, and then allow for discussion and rewriting. This student code would say a lot about their attitudes toward disciplinary measures. For example, students could discuss how they would treat a student who was being disciplined, what students themselves can learn from commensurate and compatible consequences, or how to separate misbehavior from healthy efforts to be accepted as a person people enjoy being around. Student discussion and negotiation about "principles of style" relating to disciplinary actions could be an enlightening and profitable learning experience. When the student document is ready, with space for additions, post it next to your rules. Your rules along with the ethical statement of all involved provides a picture which can always be viewed and remembered. This approach to ethical behavior and discipline is designed to create a high level of trust and respect for judicious rules and decisions on the part of students, teachers, and administrators.

In summary, the law and ethics of any profession are at best fragile and difficult to manage when put into practice. Too often educators are heard to say, "When the classroom door closes behind me, I am the authority who will make the final decisions." Who is to know then if reasonable professional ethics will or will not be used to guide all actions and decisions? The ethical basis for student discipline depends on the conscience of individual educators and what they believe professional ethics to mean. In its final analysis, a teacher's classroom is the student's world.

Bibliography

THE source for this perspective is the United States Constitution and seventeen years' worth of school law lecture notes. Although I have chosen to cite only a few cases, I have amalgamated countless legal commentaries, treatises, texts, and related state and federal court decisions. I have focused primarily on the synthesis of school law and proven educational practice and have made a conscious effort to minimize legal language and references. This book is not intended as a legal resource, but rather a guide to judicious rules, decisions, and ethics related to student discipline. Teachers and administrators seeking a legal opinion should always consult the attorney that will be representing them if litigation from that advice should occur.

Because laws can change quickly and dramatically, it is essential for administrators and teachers today to keep themselves current. I recommend the following sources:

NOLPE
(National Organization on Legal Problems of Education)
3601 Southwest 29th, Suite 223
Topeka, Kansas 66614
913-273-3550

This monthly publication summarizes recent court cases and makes available well-written articles, books, and collections of legal issues in education. This is an indispensible reference for every school administrator and should be accessible to interested classroom teachers. Membership is about $55.00 a year.

West's Education Law Reporter
50 West Kellogg Blvd.
P.O. Box 64526
St. Paul, Minnesota 55164

West's is a bi-weekly publication containing state and federal cases in education printed in full text as well as thoroughly documented and informative legal commentaries. The audience for this publication is the school attorney and educators teaching and studying the law. Subscription price is about $300.00 a year.

Case Citations

1. *Meyer* v. *Nebraska*, 262 U.S. 390 (1923).
2. *Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969).
3. *New Jersey* v. *T.L.O.*, 105 S. Ct. 733 (1985).
4. *Murray* v. *Curlett*, 374 U.S. 203 (1963).

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Federal Educational Rights and Privacy Act (20 U.S.C. Sections 123g-1232i).